LEAKING UNDERGROUND STORAGE TANK TRUST FUND AMENDMENTS ACT OF 1997

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCE AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

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FIRST SESSION

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LEAKING UNDERGROUND STORAGE TANK TRUST FUND AMENDMENTS ACT OF 1997

THURSDAY, MARCH 20, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:06 p.m., in room 2322, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (presiding).

Members present: Representatives Tauzin, Crapo, Deal, Largent, Ganske, White, Manton, Stupak, Engel, Sawyer, and Furse.

Staff present: Fred Eames, majority counsel and Alison Berkes, minority counsel.

Mr. TAUZIN. The committee will please be in order. The subcommittee is meeting today to hear testimony on H.R. 688, the Leaking Underground Storage Tank Trust Fund Amendments Act of 1997 and the Chair recognizes himself for an opening statement.

Let me first, before I make the opening statement, by way of explanation, point out that our good friend, Chairman Oxley, is attending to his father's death today and he has asked me to Chair the hearing and markup in his absence. I want all of you to know that our hearts go out to him, and those of us who have experienced a loss of a parent feel his grief today and we share that with him.

The subcommittee will come to order. H.R. 688 is the same bill that we adopted last year, and as Yogi Berra said, "It's like deja vu all over again." We'll hear testimony today on the bill, which was passed by voice vote last year. Not a comma was changed to my knowledge. The bill is identical to the bill that was supported by members of this committee last year. Chairman Schaefer, I think, has gathered 16 bipartisan cosponsors from the committee, including Mr. Stupak, who is one of the prime sponsors of the legislation of the 104th Congress. I think we ought to congratulate both of them for their work.

We have the same witness organizations that testified last July. They will tell us whether anything has changed since the LUST Program was last looked at then or what their views might be on this legislation. Each of us who owns a car pays taxes into this fund. On every gallon of gas we buy, we pay one-tenth of a cent into this LUST Program. The tax went into effect in 1987 and it expired at the end of 1995. Less than 40 percent of the money we have all paid into the program has been actually spent on the program. The figures last year were that we had spent $595 million

on the program since 1987 out of the $1.7 billion that was collected. Congress appropriated another $60 million for the program this fiscal year.

Before we give the taxes another ride, we ought to look carefully at using what we've already collected. Hopefully, this legislation will give the appropriators a little incentive to give this program a higher priority. In contrast with some other environmental programs, we taxpayers seem to have gotten an effective program for our LUST money. With the Federal financial assistance they receive through EPA's cooperative agreements, States have secured cleanups, since 1987, of more than 140,000 sites. If only we could say the same thing in Superfund. That compares favorably indeed to the Superfund Program which after 17 years has actually cleaned up only a few hundred sites and has done so at a cost to taxpayers of some $20 billion or more.

H.R. 688 improved the LUST Program in two key ways. First, it requires EPA to give at least 85 percent of its appropriation to the States each year. This ensures that the money goes where the tanks are and where the clean up work is done. I commend the EPA for giving an average, by the way, of 86 percent to the States over the previous years, so we're right in that ballpark.

Second, the bill authorizes three new uses of the Federal funding, giving the States flexibility to make their programs more effective by: first, putting the funds into a State financial assurance fund for tank cleanups in cases of financial hardships; second, enforcing Federal requirements of underground tanks be brought up to a minimum leak detection and prevention standards by 1988; and third, administering their State assurance funds. Less than 30 percent of tank owners have come into compliance with the EPA tank requirements that all tank owners will have to meet in 1998. We need, frankly, to help the States meet the financial burdens of the huge enforcement bill—the task rather, that is coming down the pike in the next year. The bill also requires EPA to keep using its current formula for allocating LUST dollars among States and prohibits EPA from cost recovering from owners and operators any money given to the States for corrective actions on the State assurance programs.

Finally, it prohibits States from using the money to help someone comply with the 1998 tank requirements. So tax dollars won't be used to put people who have already complied at a competitive disadvantage.

Again, I want to congratulate Chairman Schaefer for authoring the bill, and Mr. Stupak, and many others on their work, including the ranking minority member, my good friend, Mr. Manton, whom I'm pleased now to recognize for an opening statement.

Mr. MANTON. Thank you, Mr. Chairman. I appreciate the opportunity for a hearing prior to our markup of H.R. 688, Mr. Schaefer's bill to amend the authorized uses of the Leaking Underground Storage Tank Trust Fund. Today's hearing will allow our newest members to familiarize themselves with this program and the provisions of the bill, which is identical to legislation the Commerce Committee reported unanimously last Congress.

I commend you, Mr. Chairman, along with Mr. Schaefer, and my good friend Mr. Stupak, for cooperating, so effectively, in the proc-

ess of developing this legislation. Your commitment to addressing the concerns from members on both sides of the aisle and the administration, has resulted in the development of a reasonable bill which meets most, though not all, of the concerns that have been expressed regarding the proposed legislation and the LUST Program.

The problem of leaking underground storage tanks is extensive, affecting communities of all sizes across the country. These faulty tanks, which EPA estimates to be on the order of some 300,000, pose significant environmental and human health concerns to many. We heard during the hearing last year, however, that the States and industry, in conjunction with the EPA, are actively and effectively confronting this problem in an effort to cleanup and prevent damage from leaking tanks.

Mr. Chairman, I believe changes that were incorporated in last year's bill will serve to address issues relating to the application of Federal funds by the State programs, satisfying a primary concern of my own. While I continue to support the worthwhile goals of Messrs. Schaefer and Stupak and will vote for H.R. 688 in markup, I look forward to the testimony of today's witnesses and hope they will satisfy some lingering concerns I and others have about the legislation. This concludes my opening statement and I yield back the balance of my time.

Mr. TAUZIN. The time has expired. I thank the gentleman. Any other members wishing to make an opening statement? Mr. Stupak?

Mr. STUPAK. Mr. Chairman, thank you and thank you to the members of the subcommittee for working together in taking a major step in moving forward on this very important bill. I appreciate the opportunity, once again, to work with my friend, Mr. Schaefer, as we did in the last Congress, to move this bill forward. The Leaking Underground Storage Tank Program is one of the most important and least known environmental programs run by the Federal Government and the States.

The National Water Quality Inventory, in the 1995 Report to Congress, States that, leaking underground storage tanks are the most frequent cause of ground water contamination. Unfortunately, the Appropriations Committee does not feel our Nation's ground water is a high priority. Last year the Appropriations Committee cut the President's request by more than one-third. The Appropriations Committee's actions are even more frustrating because the Leaking Underground Storage Tank Program is funded, as you indicated Mr. Chairman, to a tax collected from petroleum products.

Currently, the Leaking Underground Storage Tank Trust Fund, or LUST as we call it, has a $1 billion surplus. I will continue to join with my colleagues, especially Mr. Schaefer, in the fight to increase the appropriations for this program. This program came to my attention when I discovered that my State's own Leaking Underground Storage Tank Fund became insolvent due to improper management and funding. In Michigan, the fund is not accepting new claims and cleanups on these tanks have all but ceased. Although I believe the legislation that we're discussing here today is an important step in cleaning up leaking tanks, it is my hope that

the States, and Michigan in particular, will renew their State commitment to this program.

Beyond any doubt, H.R. 688 will make an improvement to the program. These improvements will increase the amount of funding available for contaminated sites; increase the amount of money for State enforcement; and will guarantee that the money Congress appropriates for this program will get actually to the States.

This legislation does not completely turn this program over to the States. We have maintained a strong role for the EPA in this legislation by preserving the current cooperative agreement process between the States and the Federal Government. This bill will not decrease the Federal role in the LUST Program, rather, it will strengthen a Federal/State partnership that has been successful in some States since the program's inception.

Mr. Chairman, I want to thank you for holding the hearing on this legislation offered by Mr. Schaefer and myself. It remains our intent to encourage a more flexible use of Federal resources while continuing to hold polluters responsible for their waste. The bill before us today will not require the Appropriations Committee to direct more money to this problem. However, it will strengthen the EPA's partnership with the States and increase the EPA's flexibility to use this money for the Leaking Underground Storage Tank Program in the States.

Again, thank you and thank you to Mr. Schaefer and his staff and my staff person, Matt Berzok, for all their work over the past year on this issue. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you. Is there any other member wishing to make an opening statement? Then the chairman asks unanimous consent that we permit a visiting member of the Commerce Committee, he's not a member of the subcommittee, Mr. Schaefer, the author of the bill, to make an opening statement. Without objection, Mr. Schaefer is recognized.

Mr. SCHAEFER. Thank you very much, Mr. Chairman. I am glad to be a guest on this panel today. I have a full opening statement, without objection, I would like to make it part of the record.

Mr. TAUZIN. Without objection. So ordered.

Mr. SCHAEFER. Last year, as this committee knows, Congressman Stupak and I introduced this legislation. It was approved by a voice vote in this subcommittee and in the full House. The only problem was we couldn't get it through the Senate. The bill that we have today is identical to the version that was approved last year. It has over 60 bipartisan cosponsors. It is supported by a cross section of industry and rural America. This is really what we're talking about here to a large extent. The small town supplier of gasoline who may be the only one in one town who cannot afford to pull out their tanks and put in new ones. This is what it's all about. I think this is important to know. As far as my own district, it really doesn't affect it to a large extent, but it does affect rural America.

I'm pleased to announce that the Senator from the State of Colorado, Wayne Allard, will be introducing similar legislation, if not today, very, very shortly. So, to sum up, what we are trying to do is just give the States more financial stability and greater flexibility in operating their underground storage tank programs.

I would like to thank the chairman very, very much for the opportunity just to be here today. I look forward to the testimony and also I want to particularly thank Congressman Stupak and members on the other side of the aisle for joining with me in trying to get this bill through. I yield back my time.

[The statement of Hon. Dan Schaefer follows:]

PREPARED STATEMENT OF HON. DAN SCHAEFER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Thank you, Mr. Chairman. I appreciate the opportunity to sit as a guest on this panel today.

Last year, Congressman Bart Stupak and I sponsored the Leaking Underground Storage Tank Trust Fund Amendments Act. It was approved by voice vote in this subcommittee, the Full Commerce Committee and on the House floor. Unfortunately, the Senate was not able to take final action before the end of the 104th Congress.

The bill before the subcommittee today is identical to the version approved last year. It has over 60 bipartisan cosponsors and enjoys the support of a broad cross section of industry groups and other associations, such as the National Association of School Boards.

In addition, I am pleased to announce that Senator Wayne Allard from Colorado will soon introduce corresponding legislation in the Senate, possibly today.

The purpose of the bill is simple: We aim to give states more financial stability and greater flexibility in operating their leaking underground storage tank programs.

The process of crafting this legislation has been open to all parties. We solicited and received suggestions about how to achieve our end goal—program flexibility and stability. EPA, Commerce Democrats, state regulators and industry all made meaningful contributions to this bill.

The so-called "LUST" program was first enacted in 1984. The trust fund followed in 1986. The current LUST statute allows states to spend the federal LUST trust fund money in a limitod number of instances—mainly where an owner is unable or unwilling to clean up a leak and state administrative activities related to these actions.

Along with the corrective action standards for leaking tanks, the LUST statute also requires owners and operators of underground storage tanks to meet certain standards. The deadline for compliance with these tank standards is 1998. When implemented, the tank standards will provide an important preventative protection against many future leaks. States are currently not allowed to use federal LUST trust fund money for these actions.

The LUST program has largely been a success. The regulated industry and the EPA tank office share a good working relationship. However, the nature of the program is about to change drastically. I believe this legislation will aid in making this transition a smooth one.

After the new tank regulations take effect, the EPA envisions scaling back its tank office in the near future. States will become the primary enforcers for the tank standards and oversee corrective action where leaks have occurred.

I support this progression. However, as states are expected to take more responsibility over the LUST program and, as more leaking tanks are uncovered in the upgrade process, I believe it is critical that states be given more freedom to use LUST trust fund money where most needed.

Finally, while EPA has traditionally dedicated about 85 percent of its annual LUST trust fund appropriation to states, as state functions increase, particularly in enforcement, and EPA phases out its role we need to give states peace of mind that this tradition will continue. H.R. 688 gives this financial stability.

Once again, Mr. Chairman, I thank you for the guest seat on your subcommittee. I look forward to the witnesses' comments.

Mr. TAUZIN. I thank the gentleman. The Chair recognizes Mr. Manton, for a unanimous consent request.

Mr. MANTON. Mr. Chairman, thank you. I ask unanimous consent that the statement of John Dingell, the ranking member of the full committee be placed in the record.

Mr. TAUZIN. Without objection. So ordered.

[The prepared statement of Hon. John D. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I commend you, Chairman Schaefer and Mr. Stupak for your willingness to work on a bipartisan basis and to listen to the concerns of states, industry and the Administration in crafting this legislation. I believe that together we substantially improved this legislation and would hope that as in the last Congress no further changes are made to this legislation without our mutual agreement.

I support federal funds to help state enforcement of the underground storage tank standards for prevention of leaks. This new use of federal funds for enforcement, in addition to the current use of federal funds to pay for cleanup conducted directly by the states, should take precedence over other uses of the LUST trust funds, in my view. I recall that at last year's hearing on this subject we heard testimony from the states and others that enforcement should and would be a priority use of the federal funding. However, the states have strenuously objected to legislative language that would prioritize the state's use of federal funding. I would therefore expect to find in the future, after this legislation is enacted, that the states have in fact placed a priority on the use of federal funding for enforcement purposes, consistent with their stated intention before this Subcommittee. If implemented in this way, then this legislation will provide incentives for states to responsibly administer their state programs, which will, in turn, expedite the cleanup of leaking underground tanks.

Finally, I share the Administration's commitment to the principle that financially viable parties pay for the cost of remediating contamination. The modifications we made to the legislation last year go a long way to satisfy my concern that limited federal resources will not under any circumstance be spent reimbursing owners and operators of leaking tanks who have the financial resources to clean up the mess they created. I would expect the EPA to consider the state's compliance with this principle in entering into and reviewing the cooperative agreements through which the federal funds are distributed.

Mr. TAUZIN. And without objection, any member may submit written statements for the record. Are there any other statements by any member?

[The prepared statement of Hon. Paul E. Gillmor follows:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, I want to thank you for calling this important hearing on legislation concerning the leaking underground storage tank program (LUST). While the mere mention of the word "lust" generally tends to get people's interest, and I remember several plays-on words from our committee's work in the last Congress, we should not resist the temptation to uncover this importance of this LUST too.

The Leaking Underground Storage Tank program was established a little over a dozen years ago to set forth leak detection and prevention standards for underground storage tanks. Funded by a one-tenth of one cent tax on gasoline sales, the LUST Trust Fund is used by the U.S. Environmental Protection Agency (EPA) and the states to enforce and activate cleanup actions. In addition to Federal efforts, many states have also set up state trust funds, funded by state gas taxes and fees, to help supplement other cleanup concerns.

However, as has become the case in many Federal cleanup programs, these efforts have only gotten us closer to the beginning than the end. While many tank owners have moved to upgrade their equipment and bring their facilities into Federal compliance by 1998, studies suggest that 74 percent of active tanks are not ready to meet the standard. To further illustrate the point, EPA reports that of the 1.2 million tanks operating nationwide, 315,000 leaks have been detected on tanks that are in the process of upgrading. This indicates that there is not only a lot of work to be done on this front, but—similar to Superfund—there are probably several small to mid-size companies that would face a financial hardship trying to modernize.

Mr. Chairman, this is a daunting task indeed. The legislation before our committee today, I believe would set us on the right path to getting this problem solved. H.R. 688 does two things. One, which I strongly supported as part of Superfund, it takes the bulk of Federal money—$66.5 million in fiscal year 1997—and puts it t[illegible] anup. I believe that by minimizing administrative costs, we can have a l[illegible]e environmental program in which we can all take pride. Second, this pro-

gram puts greater remediation responsibilities in the hands of the states, where experience and familiarity will help to solve many of these problems. Finally, this bill expands flexibility in the way that the LUST Trust Fund can be used to meet these very pressing environmental concerns.

I look forward to hearing the testimony of the witnesses before our panel today. Even though I am a cosponsor of H.R. 688, I believe that there is still much more to be learned about how to improve our environment and make leaking underground storage tanks less of a concern. I will be particularly interested in hearing how EPA views this problem, where states believe this program can be improved, and how small businesses, like the local gas station, will be affected by our efforts.

Mr. TAUZIN. Then the Chair is pleased to welcome our first panelist, Mr. Michael Shapiro, the Acting Deputy Assistant Administrator for the Office of Solid Waste and Emergency Response at EPA.

Mr. Shapiro, we're delighted to have you here, sir, and you're recognized for the obligatory 5 minute presentation.

STATEMENT OF MICHAEL H. SHAPIRO, ACTING DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. SHAPIRO. Thank you very much, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to testify on H.R. 688 and would like to thank you for your willingness to listen to our concerns and to consider changes and for the kind words you had for our Underground Storage Tank Program.

I think we in the States have had a truly unique and successful partnership in trying to address this very significant environmental problem. As you said, during the 104th Congress, we worked closely with members of the subcommittee and their staffs on H.R. 3391 which has been introduced in its amended form as H.R. 688. We greatly appreciate the productive relationship we had with the subcommittee and staff last year and look forward to continuing to work with you this year. Despite the productive dialogue which occurred between the Agency and your subcommittee, the administration was not able to support the version of H.R. 3391 which passed the House. We continue to be concerned over aspects of the proposed legislation. While the administration is now willing to consider and adopt limited alternative uses of Trust Fund resources, we believe that any contemplated use of Trust Funds should ensure that the funding necessary to clean up abandoned sites and to oversee the large number of responsible party cleanups be provided for; that funds should be used to protect the Nation's ground water; and that EPA should have the flexibility to manage the Trust Funds in a way that maximizes protection of human health and the environment.

EPA has concerns with three aspects of H.R. 688. The use of Trust Funds to supplement State financial assurance funds; the potential for use of Trust Funds to reimburse solvent viable responsible parties; and the statutory fund allocation ratio. I would like to briefly discuss each of these concerns.

First, at current appropriation levels, EPA is concerned that supplementing State financial assurance funds with LUST Trust Funds could divert resources needed to oversee responsible party cleanups and remediate abandoned sites. During the past 8 years, more than 250,000 LUST cleanups have been initiated or com-

pleted by responsible parties under the oversight of State program staff. This makes it clear that the Federal funding for State oversight of responsible party cleanups is a key factor in the overall success of the LUST Program. To the extent that Trust Fund moneys are redirected to pay for State assurance fund cleanups, as may be called for under H.R. 688, this could result in reduced funding for many corrective action oversight activities, thereby, potentially reducing the overall effectiveness of the program.

Second, H.R. 688 would allow Trust Funds to be used to reimburse responsible parties for cleanups where other resources may be available. The bill did try to limit responsible party reimbursement to those situations where financial resources of the owner or operator, excluding resources provided by State assurance funds are not adequate. It is our concern, however, that this still, perhaps, leaves a broader opportunity for reimbursement of potentially viable parties than would be desirable.

It is our understanding that the language in the bill was intended to address legitimate concerns of small businesses that may not be able to afford the cost of corrective action. We think it could be improved, for example, by including coverage provided by State funds in the determination of financial hardship in order to ensure that only those parties that truly have no other financial resources benefit from Federal funding.

My third area of concern is that the bill would codify EPA's grant award patterns, specifying that 85 percent of Trust Funds be distributed to the States. On average, EPA has awarded approximately 85 percent of Trust Fund appropriations to the States since 1989. However, that ratio has ranged from 81 to 89 percent. In years of reduced appropriations such as fiscal year 1996, it would have been impossible for EPA to comply with an 85 percent mandate and still keep critical core program resources operational. A statutory restriction could also severely limit EPA's ability to deal with its statutory responsibilities for USTs in Indian country.

Before closing, I would like to note a provision of H.R. 688 that EPA does support: The use of Trust Funds by States for enforcement of the UST technical standards and the 1998 tank upgrading requirements. The amount of Trust Funds needed for this purpose would be relatively small; could be used very effectively by the States; and would help the programs in the long-term by reducing the number of long-term future leaks. Therefore, we support this new use of Trust Fund resources.

Mr. Chairman, this concludes my testimony. I've submitted a fuller discussion for the record and I now welcome questions.

[The prepared statement of Michael H. Shapiro follows:]

PREPARED STATEMENT OF MICHAEL H. SHAPIRO, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Good morning, Mr. Chairman and members of the Subcommittee. I am Michael H. Shapiro, Acting Deputy Assistant Administrator of the Office of Solid Waste and Emergency Response of the U.S. Environmental Protection Agency (EPA). I appreciate the opportunity to testify on H.R. 688 which would amend the Resource Conservation and Recovery Act's Subtitle I provisions for the Leaking Underground Storage Tank (LUST) Trust Fund. I also would like to thank you for your willingness to listen to our concerns and consider changes. During the 104th Congress, we worked closely with members of the Subcommittee and their staffs on H.R. 3391, which was reintroduced in its amended form and is the subject of teday's hear-

ing. We greatly appreciate the productive relationship we had with the Subcommittee and staff last year and look forward to continuing to work with you in the future.

Despite the preductive dialogue which occurred between the Agency and your Subcommittee last year, the Administration was not able to support the version of H.R. 3391 which passed the House. As I will explain in my testimony, the Administration's thinking on the use of LUST Trust Funds has evolved since that time. However, we continue to believe: (1) that any contemplated use of Trust Funds assures that the funding appropriations necessary to oversee the large number of responsible party cleanups and to support cleanup of abandoned sites are provided for; (2) that funds be used to protect the nation's groundwater; and (3) that EPA has the flexibility to manage the Trust Funds to achieve the maximum protection for human health and the environment. As a result, we continue to be concerned over aspects of the proposed legislation. Before discussing our concerns, however, I would like to provide some background information on the federal LUST Trust Fund and on the funds that states have established to help pay for leaking underground storage tank cleanups.

Since its inception in the mid-1980s, EPA's Underground Storage Tank Program has developed an effective partnership with states to implement the program. The states and EPA together have accomplished a great deal: 317,000 releases have been identified; 252,000 cleanups have been initiated; and 153,000 cleanups have been completed. From the outset, this program was designed to be implemented primarily by the states. In general, all states implement the underground storage tank program under grants and cooperative agreements with EPA, although EPA retains responsibility for implementing the program in Indian Country. We believe that this effective partnership serves in many ways as a model for other programs.

States use LUST Trust Funds to oversee cleanups, perform state-lead cleanups when a responsible party cannot be found or is unable or unwilling to remediate a site which presents an imminent threat to public health or the environment, and take enforcement actions at leaking tank sites. In the past few years, appropriations for the Trust Fund have generally been below the Administration's request. For Fiscal Year 1998 the Administration is proposing $71.2 million, an increase of $11.2 million, for currently allowed uses of the LUST Trust Fund, which would return the appropriations to Fiscal Year 1995 levels.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND

Background

Congress created the Leaking Underground Storage Tank (LUST) Trust Fund in 1986 to provide a stronger funding base for the cleanup portion of the underground storage tank program. The LUST Trust Fund provides money for EPA to help administer the program. More importantly, the Trust Fund provides funds for states to oversee cleanups, take enforcement actions at leaking tank sites, and undertake state-lead cleanups when a responsible party cannot be found or is unable or unwilling to remediate a site which presents an imminent threat to public health or the environment.

The preponderance—an approximate average of 85 percent—of the LUST funds Congress has appropriated to EPA since 1986 has been awarded to the states under formal cooperative agreements. As I mentioned before, we believe that the states and EPA have forged an effective partnership that, in many ways, can serve as a model for other programs. While a great deal of work remains to be done, the states supported by EPA, have been able to oversee completion of more than 150,000 cleanups.

In the LUST Trust Fund authorizing legislation, Congress established that responsibility for cleaning up a site rests with the owner or operator of the UST. The Trust Fund is intended to be a fund of last resort. Thus, parties responsible for leaks are not eligible to receive LUST Trust Fund money. Further, in the limited number of instances when the Trust Fund is used for cleanup, the tank owner or operator is liable to EPA or the state for its incurred cost of cleanup.

Appropriations History

To date, the highest appropriation to EPA from the LUST Trust Fund was $83 million in Fiscal Year 1993. In Fiscal Year 1996, the Administration requested $77.3 million and received $45.8 million. In Fiscal Year 1997, EPA received $60 million, and the Administration has requested $71.2 million in its Fiscal Year 1998 budget proposal. Workload is at an all-time high in the LUST program as the number of confirmed releases now exceeds 315,000, and states are currently overseeing more than 160,000 active cleanups. Furthermore, we expect that states may identify as

many as 100,000 additional releases as owners and operators comply with requirements to upgrade, replace, or close their tanks by December 1998. EPA has no intention of extending the deadline and states have no authority to do so. Thus, the states face a formidable and increasing workload.

I would like to note another aspect of the Administration's budget proposal. As part of the Fiscal Year 1998 budget submission, the Administration has proposed to transfer $53 million from the LUST Trust Fund to reimburse the General Fund for three EPA programs: the Underground Storage Tank Program ($17.2 million), Underground Injection Control Program ($22.6 million), and the Groundwater Protection Program ($13.5 million). The Administration believes these existing programs should be funded from the LUST Trust Fund because they all address protection of groundwater from underground sources of contamination. States have reported that leaking underground storage tanks are the leading source of groundwater pollution, and petroleum is the most prevalent contaminant (National Water Quality Inventory, Report to Congress, December 1995). The $53 million needed to implement these programs in 1998 would continue to be requested through their traditional appropriations accounts and paid out of the General Fund. However, EPA's General Fund would be reimbursed for the cost of these programs through a $53 million transfer payment from the LUST Trust Fund to the General Fund. This transaction would not affect the appropriation level for the LUST Trust Fund corrective action program.

The Administration also is proposing to reinstate the LUST tax of 0.1 (one-tenth) cent on each gallon of motor fuel sold in the country to fund the LUST Trust Fund through 2007. The LUST tax expired December 31, 1995.

STATE ASSURANCE FUNDS

States originally developed assurance funds to help pay for cleanup of sites with pre-existing contamination and to enable tank owners to comply with federal financial responsibility requirements for USTs. The use of state assurance funds as a compliance mechanism is allowed in the federal statute enacted in 1986 and in EPA's financial responsibility regulations.

States voluntarily choose to submit their funds to EPA so that EPA can determine that funds are "equivalent" to other mechanisms allowed by the regulation such as insurance, letters of credit, surety bonds, and corporate guarantees. Currently, 42 states have submitted their funds to EPA for approval, and 34 funds have been approved. Pending the EPA Regional Administrator's determination that a fund is an acceptable compliance mechanism, the owners of USTs in that state will be considered to be in compliance with the financial responsibility requirements for the amounts and types of costs covered by the state assurance fund.

In general, the state assurance funds act as a reimbursement mechanism, paying owners and operators for costs incurred in remediating releases. These owners and operators are usually known, willing to perform cleanups, and solvent. In contrast, when federal LUST funds are used for a cleanup, it is likely that the owner or operator is unknown, unwilling, or unable to pay for the remediation.

Aside from serving as the primary mechanism for financial responsibility compliance for many businesses (especially small businesses), state funds are playing a major role in state cleanup programs, and that role continues to grow in importance. Collectively, the existing state assurance funds raise almost $1.2 billion annually to help pay for cleanups. Had state assurance funds not existed, many cleanups, especially cleanups of historical releases, would not have occurred. Compared to the most recent LUST Trust Fund appropriation, the states are raising approximately 20 times more than the current annual appropriation. Perhaps more significantly, at a time when LUST Trust Fund appropriations have declined, state assurance fund revenues are increasing. In the last four years, state funds have increased revenues by 30%. However, claims against the funds also are growing. The most recent data collected by the states show outstanding claims at $2.8 billion, with the current balance in the funds amounting to $1.3 billion and current income at $1.2 billion per year.

In the sections which follow, I plan to discuss EPA's three specific concerns with the proposed legislation.

EPA'S CONCERNS WITH H.R. 688

1. Expanding Uses of the LUST Trust Fund Could Reduce Protection of Public Health and the Environment

Currently, the LUST Trust Fund provisions of RCRA Subtitle I allow for expenditure of Trust Fund monies for several purposes, including direct cleanup of leaking

USTs, enforcement and issuance of corrective action orders to responsible tank owners and operators to compel them to clean up, and cost recovery of Trust Fund monies. Through negotiated cooperative agreements, EPA and states together determine how best to balance Trust Fund monies among these eligible activities to maximize protection of public health and the environment.

EPA is concerned that supplementing state financial assurance funds with the LUST Trust Fund as proposed under H.R. 688 could come at the expense of the existing LUST Trust Fund corrective action programs within the states and could significantly reduce the number of UST cleanups undertaken and completed. For Fiscal Year 1998, the Administration's budget request for the LUST Trust Fund is $71.2 million. This level would not provide adequate funding to support such new uses of the Fund to the extent that the new uses significantly divert money from the current corrective action program.

For the vast majority of leaking UST sites, EPA and the states that implement the LUST Trust Fund program have been able to identify a responsible party (RP) and, in 95% of the cases, compel the RP to perform the cleanup. Typically, the RP, a state cleanup fund, and/or private insurance bear the costs of the cleanup. In these cases, the LUST Trust Fund is used to fund state staff to enforce and oversee the cleanups performed by RPs. With a few thousand dollars of LUST Trust Fund money, a state staff person can oversee a RP-lead cleanup from initiation to completion.

During the past eight years, more than 250,000 UST cleanups have been initiated or completed by RPs under the oversight of state staff. It is clear that federal funding of state staff for oversight of these RP-lead cleanups is a key factor in the overall success of the LUST Trust Fund program. To the extent that Trust Fund monies are redirected to pay for state assurance fund cleanups as called for in H.R. 688, this could result in reduced funding for existing activities and reduced protection of human health and the environment.

EPA believes that the states' current approach to spending Trust Fund monies is an efficient and effective way of leveraging taxpayer dollars. Spending a relatively small amount of federal money per site for oversight, rather than states using federal money to conduct or reimburse cleanups, has four primary benefits: (1) extending Trust Fund monies by reducing the number of federally-funded cleanups; (2) ensuring that more responsible parties clean up their own sites; (3) improving the quality and timeliness of responsible party cleanups; and (4) preserving Trust Fund monies to pay for cleanup of orphan or abandoned sites, where responsible parties cannot be identified.

H.R. 688 also provides for a second new use of LUST Trust Fund monies, the use by states for enforcement of the UST technical standards and the 1998 tank upgrading requirements. The amount of LUST Trust Funds needed for this purpose would be relatively small and could be used very effectively by the states. We do not believe that use of LUST Trust Fund monies for enforcement purposes would drain substantial funds from state LUST technical programs and in the long term helps these programs by reducing the number of future leaks. Since this relatively small investment could have substantial benefits, we support use of LUST Trust Fund monies for enforcement purposes as called for in H.R. 688.

2. Federal Funds Could Be Used to Reimburse Tank Owners and Operators Where Other Resources Are Available

The LUST Trust Fund program as enacted by Congress in 1986 was designed to hold tank owners responsible for cleaning up and paying for releases from their USTs. The statute provides for the use of Trust Fund money for direct site cleanup where a tank owner is unknown, unable to perform the cleanup, or refuses to perform the cleanup. Where Trust Fund monies are used directly for cleanup, Congress requires that responsible tank owners and operators be held liable in cost recovery actions for such expenditures. EPA remains committed to the principle that financially viable responsible parties pay for the cost of remediating contamination.

When H.R. 3391 was considered during Subcommittee and Committee action last year, it was amended so that responsible parties would only be reimbursed when "the financial resources of an owner or operator, excluding resources provided by programs under section 9004(c)(1), are not adequate to pay for the cost of a corrective action without significantly impairing the ability of the owner or operator to continue in business." This language has been retained in H.R. 688. It is our understanding that this language is intended to address the legitimate concerns of small businesses that may not be able to afford the cost of corrective action. We believe, however, that the language does not fully meet this intent and is unnecessarily broad. The language would be improved, for example, by including coverage provided by a state fund in the determination of financial hardship, in order to ensure

that only those parties that truly have no other financial resources benefit from federal funding. We would be happy to work with the Subcommittee to revise the language to accomplish our understanding of its intent at a lower cost.

It also should be noted that state funds do pay for responsible parties' costs to remediate a site. This is a complex decision that the states have made based on criteria such as the make-up of their regulated communities, the availability of insurance in their states and the vulnerability of their groundwater and drinking water supplies. EPA has supported the states in establishing assurance funds, believing that states should have the flexibility to design their own programs to best deal with their problems. However, EPA believes that supporting state-based decisions is very different from establishing federal level policy to pay for responsible party cleanups. EPA believes that Congress correctly defined the federal role with respect to paying for cleanups when it established the LUST Trust Fund in 1986.

3. Codifying EPA's Grant Award Patterns is Unnecessary and Reduces Flexibility

H.R. 688 would specify in statute the relative funding levels for distributing Trust Fund money to the states. The 85% annual state funding level mandated in H.R. 688 reflects EPA's historical performance in awarding Trust Fund money to states, i.e., *on average,* EPA has awarded approximately 85% of appropriated LUST Trust Fund monies to the states each year. *The annual award of Trust Fund monies to states varies, however, and has ranged from 81% to 89% since 1989.* In years of reduced appropriations, such as Fiscal Year 1996, it would be impossible for EPA to comply with the 85% mandate, without sustaining severe internal cuts in the Agency's Trust Fund program. In Fiscal Year 1996 when the appropriation dropped to $45.8 million, EPA shared in the budget cuts but retained 19% of the appropriated funds and awarded 81% to the states. This enabled us to retain experienced and talented staff in the program. This proved to be very important especially since the appropriations increased in Fiscal Year 1997 and we were able to continue progress on our major initiatives.

In the future, the Agency needs to maintain the flexibility to revise the percentage distribution, as environmental risks and resource levels change. This is especially important as EPA moves forward with implementing the LUST program in Indian Country because additional resources are needed to conduct federal lead emergency responses and corrective action activities. Thus, we believe that determining the percentage of LUST Trust Fund monies to be awarded should remain within EPA's discretion, and percentages should not be set by statutory language.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or other members of the Subcommittee may have.

Mr. TAUZIN. Thank you, sir. The Chair recognizes himself for a round of questions.

Mr. Shapiro, standard practice is for EPA to clear testimony through OMB to reflect consistency with administration position. Is that correct and has this testimony been cleared?

Mr. SHAPIRO. The testimony that I've submitted and the summary of which I presented to you has been cleared by the Office of Management and Budget, yes, sir.

Mr. TAUZIN. I want to talk to you about consistency now. Eight months ago, your testimony, EPA's testimony cleared through OMB, was "EPA's concerns with this legislation centers around expanding uses of the Trust Fund at a time when Federal discretionary appropriations are declining and the likelihood of the funding shortfalls, coupled with expanded uses, might ultimately compromise EPA's, and the States, ability to protect the environment through management oversight and enforcement of LUST cleanups." In other words, you opposed authorizing new uses of LUST Funds because they detracted from the core program purposes. Now, let's talk about consistency.

Your testimony today says that the administration has proposed to transfer $53 million from the LUST Trust Fund to reimburse the general fund for three other EPA programs. You also say in your testimony that the work load is at an all time high in the LUST Program as the number of confirmed releases now exceeds 315,000.

So here's the problem, the EPA position seems to be that the LUST funding should not be used for LUST purposes in this bill, like meeting this all-time high enforcement workload. But it's okay to use it for purposes outside the LUST Program which is exactly contrary to your testimony or the EPA's testimony just 8 months ago. What's going on?

Mr. SHAPIRO. As I indicated in my testimony, the administration has been rethinking a number of these points. As I stated at the end of my testimony, we actually——

Mr. TAUZIN. Rethinking means what? You changed your position?

Mr. SHAPIRO. That certain uses of LUST Trust Funds are appropriate.

Mr. TAUZIN. Wasn't that the objection to the bill last year?

Mr. SHAPIRO. It was one of the objections. We have a number of objections as I mentioned and some of those continue this year.

Mr. TAUZIN. Let me ask you this, is this new proposal now to use LUST Funds for other purposes something that's a one time proposal, or are you and the administration proposing that we continue the LUST tax for another 10 years so you can pay for these other programs on a long-term basis?

Mr. SHAPIRO. It's my understanding that the administration's budget proposal includes the intention to reinstate the LUST tax at the same level through the year 2007.

Mr. TAUZIN. We know that, but does it also propose to spend it on other programs instead of the LUST Program over this 5 year budget?

Mr. SHAPIRO. I actually only have knowledge, myself, of the 1998 proposal where the budget does anticipate transferring money from the Trust Fund to the general account to pay for the non LUST portion of our UST Program, as well as a number of other ground water protection programs.

Mr. TAUZIN. You see the problems we have with this. Eight months ago you were complaining that you didn't want the money, in any way, being used for other purposes, which I think is a sound objection and it was certainly the reason why Congress passed a specific tax for a specific purpose and I've just congratulated you on what a good job the program is doing. I mean here we have a success story. We've created a gasoline tax that Americans pay that is going to clean up a specific problem that gasoline itself creates in our environment in leaking underground storage tanks. And you took the right position last year that you're not spending it on something else, and now we see you testifying, and apparently cleared through OMB, that you not only want to extend the tax for 10 years, but you want to use it for other purposes now. Isn't that a violation of the trust that we have with the American taxpayer that his dedicated tax funds are going to go to the purpose we intended for that tax?

Mr. SHAPIRO. The administration, in preparing its 1998 budget, thought that this was an important use of the money that was consistent with the objective of protecting ground water and, therefore, is proposing, obviously for Congress' consideration, that the moneys be transferred.

Mr. TAUZIN. Well, I hope you understand our reluctance to accept that kind of an argument. We're being asked again to tell the

American people, we want them to pay more for gasoline taxes with the specific purpose of funding this Trust Fund, and if we wanted to raise general taxes for general tax purposes, that might be a different proposition. Do you understand our problem with that argument?

Mr. SHAPIRO. Yes, sir.

Mr. TAUZIN. I guess the record reflects our difference of opinion on it. The Chair is now pleased to recognize the ranking minority member for a round of questions.

Mr. MANTON. Thank you, Mr. Chairman. Mr. Shapiro, as I understand the administration's budget, their proposal would not have any negative effect on State corrective action programs, is that correct?

Mr. SHAPIRO. That is correct. The way in which the administration is proposing to do this would prevent actual diversion of State Trust Fund resources.

Mr. MANTON. Now, I understand this would involve an intrafund transfer from the LUST Trust Fund to the general fund, and this would not have any impact on the fiscal year 1998 LUST Trust Fund appropriation, is that correct?

Mr. SHAPIRO. That is also correct, sir.

Mr. MANTON. My understanding is also that all of the administration's proposed uses are related to protecting and cleanup of ground water resources, including contamination from leaking underground storage tanks. Is my understanding correct?

Mr. SHAPIRO. That is correct. A portion of the money would go to the Underground Storage Tank Program which is the program as was discussed, to ensure that new protective tanks are in place by 1998 across the country. The rest of the resources would be going to fund the Ground Water Protection Program and as was mentioned again, by I believe Congressman Stupak, leaking underground storage tanks are one of the major causes of ground water contamination. Similarly, the remaining resources would be used in the Underground Injection Program, which is also geared toward protecting ground water.

Mr. MANTON. Could you please explain the cooperative agreement mechanism for distributing funds to the States from the LUST Trust Fund?

Mr. SHAPIRO. The cooperative agreement arrangement between the EPA and the States, which is typically worked out between EPA's regional offices in each State, is an arrangement whereby EPA provides Trust Fund moneys to the States and the States, in general, how they plan to use the money and their priorities. It's a mutual agreement of sorts on how the States will be using their resources.

Mr. MANTON. Now, is it possible, if EPA discovers that a State is distributing Federal funds to persons who do not meet the financial hardship circumstances we have set forth in the legislation, that then the EPA could refuse to enter into another cooperative agreement with that particular State?

Mr. SHAPIRO. We would first try to work out the problem with the State. We don't view withholding money from the States as an option of first choice. Obviously, we'd want to resolve any difficul-

ties or disagreements before doing that, but ultimately EPA could do that as a last resort.

Mr. MANTON. And, finally, to your knowledge, have there been any circumstances where actions by a State have led the Agency to reconsider a cooperative agreement or to refuse entering into a cooperative agreement with that State?

Mr. SHAPIRO. Not to my knowledge in the UST Program, but I will turn to colleagues——

Mr. MANTON. Then the answer is no?

Mr. SHAPIRO. The answer is no, sir.

Mr. MANTON. Thank you. I yield back the balance of my time, Mr. Chairman.

Mr. TAUZIN. Thank you, my friend. The Chair now recognizes in order of appearance, when the gavel dropped I think we have to do it, Dr. Ganske for questions.

Mr. GANSKE. Thank you, Mr. Chairman. The bill proposes that 85 percent of the funds basically go to the States to be used for the cleanup and my understanding is that the EPA's position is contrary to that. Now, part of the reason that I'm concerned about your opposition to this is that, basically, if you're allowed to use whatever percent of those funds for the Agency's administrative personnel, you can—you're basically using a user fee to fund the Agency. And the purpose of the legislation originally was to make sure that those sites get cleaned up. I don't think that when we have, on an annual appropriations basis, some fluctuation in the amounts, whether it's driven by the administration or by Congress, that we ought to be setting aside as something untouchable, a certain administrative overhead.

Would you care to comment on that?

Mr. SHAPIRO. I don't think we're arguing that the Agency's administrative overhead should be set aside as untouchable. All we're saying—I think we share the objective that the subcommittee has in making sure as much money as possible gets into the hands of the States doing the work—is that in order to run an effective national program, in order to provide guidance that is needed nationally, in order to develop and distribute the funds in a way that safeguards the integrity of the financial system, EPA needs to have a certain critical mass of resources to do that. I'm not suggesting that the EPA resources should be protected. And indeed, when funding goes down, we anticipate that we're going to have to tighten our belts too.

We just think that the arbitrary cutoff that would operate to eliminate any EPA flexibility is both, unnecessary, and potentially detrimental to the program.

Mr. GANSKE. But if I may continue. The 85 percent is based on some historical precedent and is not significantly different from what has been done in the past. It's just that it sets a minimum so that the Agency can't take 25 percent or 35 percent of those funds for administrative overhead as versus cleaning up the tanks. Now, if there's only $50 million appropriated, as versus $70 million, you can do so much. You can only do so many projects. There ought to be some reflection in terms of the amount of work each agency worker is doing. If you've only got $50 million versus $70

million, that requires fewer EPA officials to administer that amount. Is that not correct?

Mr. SHAPIRO. Generally, that's true and as I said, in times when budgets are tight we certainly anticipate reducing our resource levels too. But we think it is important that we have the flexibility to do that in a way that doesn't damage the long-term integrity of the program and also that the Agency have the flexibility to deal with underground storage tank problems that arise in Indian country where we have responsibility for cleanups.

Mr. GANSKE. Well, Mr. Chairman, if I may just make a comment. I'm disturbed by the administration's logic in a number of these areas where what they're attempting to do, instead of having our annual appropriations process determine the appropriate amount of funding for the administration of the regulatory agencies, we're seeing, I think, an alternative funding mechanism develop for the regulatory agencies that gets around appropriate Congressional oversight and that is by the use of—additional uses of "User fees." So I am fully in support of this bill and I thank you and I'll turn back the balance of my time.

Mr. TAUZIN. I thank the gentleman for his time. The Chair is now pleased to recognize the other author of the bill, Mr. Stupak, for a round of questions.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Shapiro, we just got the proposal where the EPA wants to use LUST Trust Fund for related EPA programs that protect ground water. About $53 million from LUST to use for other ground water protection programs like the Ground Water Protection Program, the Underground Injection Control Program, and we're very disturbed because I don't believe that was the purpose of the LUST Program. The purpose of the bill is to allow the States more flexibility with LUST Fund money, not necessarily the EPA or the administration. And without this bill, the States would be prohibited from using LUST Fund for these purposes. That being said, I'm really at a loss to understand how the EPA can reimburse general fund with LUST money for programs that have a, I guess we'd say, a tenuous nexus to the LUST Fund at best. There's no doubt, and I said it in my statement, ground water contamination is an area that EPA needs to improve its effort. However, it seems like the EPA has been reenforcing all the fears of the States and all the industries by diverting LUST Fund money to other purposes.

So I guess to boil it down, my question is what legal authority does the EPA have to reimburse the general fund with LUST Fund moneys for non LUST Fund activities?

Mr. SHAPIRO. Let me make it clear, we have no authority right now. The transfer that was described by the chairman and that I've been addressing, is something that has been proposed as part of the administration's 1998 budget submission. We could not do that today by virtue of the way the accounts are separated in the appropriations.

Mr. STUPAK. So it's fair to say, so we're clear on the record then, that there will be no transfer of LUST Fund money for non LUST Fund stated purposes without the authority of the U.S. Congress?

Mr. SHAPIRO. That is my understanding, yes, sir.

Mr. STUPAK. Thank you. I'll yield back any time.

Mr. TAUZIN. The Chair thanks the gentleman. The Chair now yields to the gentleman from Georgia, Mr. Deal, for the appropriate 5 minute question period.

Mr. DEAL. Thank you, Mr. Chairman. In reviewing your testimony and in your oral testimony here, you indicate reluctance to have the LUST Trust Funds appropriated to the States at the 85 percentile level because it would go into their State assurance funds. I thought it was the practice of EPA to enter into the agreements that are approved by EPA in advance as to how the funds are to be used, is that correct?

Mr. SHAPIRO. I think you're referring to the cooperative agreements?

Mr. DEAL. Yes.

Mr. SHAPIRO. And that is a negotiated agreement between EPA and each State. Yes, that is correct.

Mr. DEAL. I don't quite understand the logic then, if you have to enter into these cooperative agreements, of why you are afraid, in effect, that the States will inappropriately spend the money, if you, in effect, have veto power over the agreement.

Mr. SHAPIRO. Well, I think, although theoretically, we have veto power, obviously a cooperative agreement is cooperative and involves discussion and agreement between two parties. I think our point is, it seems clear to us, that at current Trust Fund appropriation levels, the biggest bang for the Federal dollar, if you will, is obtained from using that money to support State oversight of responsible party cleanups and to take care of those sites where responsible parties are either not solvent or can't be located, the orphaned or abandoned sites, if you will. And, that given the work load that we anticipate in this area in the future, we believe that, in essence, the option of diverting money to the uses that we have concerns about would not be a good way to use the Federal Trust Fund money.

Mr. DEAL. In other words, you don't think the language that is the safeguard, that is proposed of not using the funds to reimburse those who have simply just not taken the initiative to do so, you don't think that language is strong enough? And, I believe one part of your testimony, you indicated that you had some suggestions as to how that might be strengthened. Would you share those with us?

Mr. SHAPIRO. Well, what we were suggesting, if the intent—and this is in the case of perhaps responsible parties who are very small businesses and can't afford, even after the available funds from the State or their own resources are available, can't really afford to stay in business—is to take care of the cleanup problems, that limiting use of the Trust Funds to that narrow purpose would be an improvement over the current version of the bill, but that would be, we believe, a very small universe ultimately.

Mr. DEAL. Maybe I'm not reading it correctly, but I thought that was what the language that we put in there as a safeguard was exactly designed to do and if it doesn't do it, would you or your staff, at some point, provide us with more specific and precise language because I have the impression that that's what we thought we had done.

Mr. SHAPIRO. And it was certainly an improvement over the original bill that we testified on last year. I think the difference is that the financial merit test, if you will, in the bill as currently written excludes financial resources that would already be available from State funds in determining financial need and we think it would be more appropriate to acknowledge the availability of those resources. But we'll be happy to work with the subcommittee staff and provide our more detailed perspectives on that particular issue.

Mr. DEAL. I yield back the balance of my time.

Mr. TAUZIN. I thank the gentleman. The gentleman, Mr. Sawyer from Ohio is recognized.

Mr. SAWYER. I'll pass on the questions.

Mr. TAUZIN. The gentleman passes. Mr. Largent is recognized for 5 minutes.

Mr. LARGENT. Thank you, Mr. Chairman. I just have one question. Does the EPA keep track of what percentage of the funds appropriated, actually go to cleanups as opposed to litigation?

Mr. SHAPIRO. In this particular program, I think all of the Trust Fund moneys that are appropriated, except to the extent that there's some litigation associated with State or EPA enforcement actions, the money does not go to litigation, it goes to oversight of cleanups and cleanup of abandoned sites, some of which may involve enforcement actions, but that would be the only litigation expenses, I believe.

Mr. LARGENT. Is that because there is no litigation or because the funds that are appropriated for litigation purposes come from other sources?

Mr. SHAPIRO. Well, because of the way the program is run and the way the States have implemented, in many cases, their State assurance program funds. We believe that this program has generated the maximum amount of cleanup with the minimum amount of litigation among parties. But there certainly is a potential, for private party litigation in particular cases, but it does not come out of Trust Fund money.

Mr. LARGENT. So it's your testimony this afternoon, to the best of your knowledge, that this is a program that is relatively free of high litigation expense overall?

Mr. SHAPIRO. That is my impression and again—my colleagues seem to agree. Maybe the States will also have a perspective on it since they're doing most of the work as we've all acknowledged.

Mr. LARGENT. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The gentleman, Mr. Engel, is recognized for 5 minutes.

Mr. ENGEL. Thank you, Mr. Chairman. Mr. Shapiro, in your testimony, I'm wondering if you could help me to understand your first concern with the bill which is that expanding the uses of the LUST Trust Fund could reduce protection of public health in the environment. Can you, in a nutshell, captualize why you feel that way?

Mr. SHAPIRO. I'll try. Again, I'm speaking now just to the Federal Trust Fund moneys. When States use those moneys to oversee cleanups that are paid for by either responsible parties or State assurance funds, the average costs to the State and to the Trust

Fund is about $5,000 per cleanup. So a little goes a long way in terms of the number of cleanups that can be leveraged by the Federal Trust Fund moneys. If the Trust Fund moneys have to be used directly to pay for a cleanup, as could be the case with the bill, an average UST cleanup, I understand costs around $125,000. So in terms of the use of the Federal money, we don't leverage as much cleanup when that money has to go directly to pay for a cleanup. Although we realize in certain circumstances when no one else can be found, that is a purpose for which the Fund was intended to be used.

Mr. ENGEL. I see. And so you're convinced that essentially by doing it this way it would—by doing it the way the bill purports to do it, it would directly affect the amount of cleanups that can be held or that can be done?

Mr. SHAPIRO. We think it could have that potential.

Mr. ENGEL. Can you also help me to understand the transfer—the $53 million dollar transfer from the LUST Trust Fund to reimburse the general fund, essentially, how that works? It's a transfer and then it comes back at the end, is that what happens?

Mr. SHAPIRO. And again, let me stress, this would have to be approved by Congress. The proposal would be that money would be transferred from the Trust Fund to EPA's general accounts and from there used to cover the expenses of three program areas, one of which is the Underground Storage Tank Program and the others, as I have mentioned, are: the Underground Injection Control Program; and the Ground Water Program. But the money would not return to the Fund, they would basically be a permanent transfer from the Trust Fund to the general accounts.

Mr. ENGEL. I see. Thank you very much, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Engel. Any other members of the committee seeking time? Then the Chair is pleased to, by unanimous consent again, recognize our visitor from the full Commerce Committee, Chairman Schaefer.

Mr. SCHAEFER. Thank you very much Mr. Chairman. Mr. Shapiro, there have been conflicting reports about the future of the underground storage tank office. Initially, as I understand it, the EPA wanted to completely phase it out. Now, more recent reports focus on a maintained, but maybe a scaled back, operation. As I look at some of the ways which you want to use this money, which we've already promised the American people will be used to pull these tanks out, I question what's the future of the office?

Mr. SHAPIRO. Well, at this point we have no plans to eliminate the office. I think——

Mr. SCHAEFER. So that's changed?

Mr. SHAPIRO. Yes, sir.

Mr. SCHAEFER. That has changed from last year?

Mr. SHAPIRO. That's my understanding. I think our goal is to make sure that the cleanups that have to occur, and there are 160,000 or so cleanups yet to be completed and perhaps another 100,000 or more that may be identified as we move forward, that those get done and get done as effectively as possible; that the 1998 deadline for new and upgraded tanks be implemented effectively; and that cleanups on Indian lands that have to occur under Federal responsibility occur. And as we move forward in those areas,

in the near future we see a major challenge for EPA and for our State partners, as we move into the next century. When the big bulk of that activity is behind us, it would probably be appropriate to reduce the size and scope of the EPA commitment in this area. But we are not, at this point, projecting at what date, in essence, the job will be done, if ever.

Mr. SCHAEFER. Do you agree that the major issue here, or should have been when we initiated this legislation, was to get rid of the leaking underground storage tanks, get them out as soon as we could?

Mr. SHAPIRO. That's been one of the objectives——

Mr. SCHAEFER. One of them? That's the one objective not one of. It is the objective, is to get rid of them.

Mr. SHAPIRO. The other objective of our program is to make sure new tanks don't suffer the same problems as old tanks.

Mr. SCHAEFER. Well that engineering has already been done. I think that when I look at where you want to start transferring more of this money, we're going to slow down the process of pulling these tanks out, and it seems to me the EPA just doesn't trust the State to do it. I think the States know more about where these problems are than the EPA does. Do you want to comment on that?

Mr. SHAPIRO. I think the record of our program is very clear on the point that we have placed major reliance on the States. I think this program, more than perhaps any other I've been familiar with in my 16 or 17 years at EPA, has had the strongest reliance on State initiative and the implementation of the program by the States of any major program at EPA. So I think we do trust the States. Obviously, from time-to-time——

Mr. SCHAEFER. But you still don't want to give them that money? You still don't want them to be able to make these decisions?

Mr. SHAPIRO. We are giving them the money and——

Mr. SCHAEFER. Yes, but not all the money. You're keeping back 15 percent, that's No. 1. And when you start talking about tribal lands, I understand that, but how much are we talking about here? It's very, very little. As a matter of fact, didn't the EPA help us draft the financial hardship language in the bill?

Mr. SHAPIRO. I know there was discussion between——

Mr. SCHAEFER. There was more than discussion.

Mr. SHAPIRO. And we contributed suggestions.

Mr. SCHAEFER. And it's in the language?

Mr. SHAPIRO. Well, I guess when the language was reviewed last year by the Agency and the administration, we felt there were still some weaknesses.

Mr. SCHAEFER. Let me ask you this, what percent of the LUST money is going to actual cleanup as opposed to studies and oversights.

Mr. SHAPIRO. The disbursements in 1996, in terms of actual site cleanup, was about 36.5——

Mr. SCHAEFER. 36.5 percent, one-third of the total money was going to actual cleanup?

Mr. SHAPIRO. Of the Trust Fund appropriation.

Mr. SCHAEFER. At that rate, we're never going to get the tanks cleaned out.

Mr. SHAPIRO. Well again, most of the cleanups are being paid for by State funds which are many times the size of the Federal Trust Fund.

Mr. SCHAEFER. Mr. Chairman, I thank you very much. I just think that we have a good piece of legislation here. Whatever opposition that EPA has, we're willing to listen to it. I yield back my time.

Mr. TAUZIN. I thank the gentleman. Any other member requesting time?

Mr. Shapiro, we thank you very much. Before you go, I just want to share with you some great news. Speaking of dumping, the ICC just issued a preliminary finding that China has been illegally dumping crawfish into the U.S. economy and they're recommending very stiff tariffs and penalties.

Mr. SHAPIRO. Thank you.

Mr. TAUZIN. We're going to get some Louisiana crawfish back on your plate here in Washington, DC pretty soon. Good news. Thank you very much, sir.

Ladies and gentlemen, we're pleased to welcome our second panel, if you'll please assemble. Ms. Mary Jean Yon, the President of the Association of State and Territorial Solid Waste Management Officials; Mr. James Daskal, counsel for the National Coalition of Petroleum Retailers; and Mr. Jeff—is it pronounced Leiter?

Mr. LEITER. Leiter, right.

Mr. TAUZIN. Counsel for the Collier, Shannon, Rill and Scott, representing the Society of Independent Gasoline Marketers of America and the National Association of Convenience Stores; and Mr. Jeff Lykins of the Lykins Company in Milford, Ohio. I want to welcome you all. Thank you for coming.

STATEMENTS OF MARY JEAN YON, ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; JEFFREY L. LEITER, NATIONAL ASSOCIATION OF CONVENIENCE STORES AND THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA; DIMITRI G. DASKAL, NATIONAL COALITION OF PETROLEUM RETAILERS; AND JEFF LYKINS, THE LYKINS COMPANIES

Mr. TAUZIN. Before we take your testimony, I'm required to do this under a new rule of Congress. Ms. Yon, the staff indicates that they failed to ask you to submit the statement in compliance with the truth and testimony before the Congress, which is information about Federal funding. So I have to ask you, did the Association of State and Territorial Solid Waste Management Officials receive any Federal funding?

Ms. YON. Yes.

Mr. TAUZIN. And we would ask the Association to submit information to comply with the rule and we do apologize for the confusion, since you were not asked to do that before you were asked to testify.

I'm also asked to do this with you, Jeff Lykins. As a representative of PMAA, did PMAA receive Federal funding or have any Federal contracts?

Mr. LYKINS. No, sir.

Mr. TAUZIN. We would also ask that you submit that statement for the record to comply with the rule.

Mr. DASKAL. Mr. Chairman, could we amend our answer and say, "Not for lack of trying?"

Mr. TAUZIN. I guess you could. I'm pleased now to introduce, Ms. Mary Jean Yon, the President of the Association of State and Territorial Solid Waste Management Officials.

Let me say this for the record, all of your written testimony is part of our record. Our hearings are designed to be conversational. So if you can just summarize and tell us what's in your written statement, please, Ms. Yon.

Ms. YON. Thank you, Mr. Chairman. Good afternoon. My name is Mary Jean Yon. I'm from the State of Florida and I'm here today as the immediate past President of ASTSWMO. I'd like to lead off by just thanking you for inviting the Association back this year to testify on H.R. 688.

ASTSWMO believes that we offer a unique perspective to this dialog today because our membership is comprised of the people that actually run these programs and are actually out there doing these cleanups. The States have always had the lead on cleaning up leaking underground storage tanks and we've enjoyed a very good working relationship with EPA. They've provided much needed technical assistance and funding throughout the history of this program.

According to EPA's figures, as you've heard, over 152,000 cleanups have been completed, and we're looking at another 164,000-plus that are still waiting to occur. With that thought in mind, ASTSWMO appreciates the subcommittee's intent to provide this increased amount of stability and certainty to the States as they carry out this cleanup program and we support the requirement that EPA allocate, at least, 85 percent of the appropriation to the State.

To date, 49 States have cooperative agreements with EPA to support this program. Typically, States use these as paying for essential staff to oversee these programs. You may be interested in hearing that the only State who doesn't currently have a cooperative agreement in place is my State, the State of Florida. We have, however, applied for this agreement and we're just waiting to hear back from EPA. We see these funds as being helpful in administering what we find to be a challenging, if not overwhelming, program. Since our LUST Program began in 1986 in Florida, we've cleaned up 3,600 sites and we have a current universe of 18,000 sites that are awaiting cleanup. Florida alone has spent $549 million on these cleanups and reimbursements since 1986.

In a general sense, experience is showing us that many leaks and discharges are discovered when these tanks are uncovered, when people are actually going out there to upgrade and to do the compliance activities in accordance with EPA's technical standards which have the 1998 deadline. Our members have surveyed most of the State programs and we've determined that approximately 29 or 30 percent, the same number that Mr. Shapiro used, of the existing underground storage tanks now meet these standards. When you consider that EPA's figures also indicate a total universe of over one million active tanks in the U.S., you begin to get a feel

for just how many tanks are out there awaiting, both the upgrades and the possible discovery of more discharges that will need to be addressed. In other words, we don't see this responsibility associated with this program going away any time soon, and we're convinced that Federal funding from the LUST Trust Fund must continue.

In addition to injecting an increased level of stability into the LUST Program, we see this bill as improving the efficiency of programs by allowing two new uses of the Trust Fund moneys. And what I'd like to do is just address each of these uses and then offer some general comments on the bill.

First, the bill proposes allowing States to incorporate this LUST Trust Fund moneys into existing State funds. As I mentioned earlier, States are the ones that are actually managing these cleanups and we do so with a mix of both, State and Federal funds. States use these cleanup resources only after a very careful evaluation of risks. Risk based corrective action has now become the norm for many of these State underground tank programs and we keep a consistent focus on making sure that the limited funding that we have, goes to the sites that pose the highest risk. We believe that allowing Federal Trust Fund moneys to be placed in State trust funds, will ensure more streamlined and systematic approach to our cleanups.

The second use of the Trust Fund moneys proposed would allow States the discretion to allocate their money for either enforcement or corrective actions. This is an area where every State is going to be different in terms of their priorities and we believe that States are in a better position to decide whether resources should be spent on enforcement or corrective action. I'd like to add that ASTSWMO strongly supports the report language in last year's committee print that indicated that the prioritization of the fund usage should be left to the States.

I'd like to close today by infusing just a little bit of reality into this discussion. While States are very appreciative of the greater comfort level that this bill would provide, and while we support the new and expanded uses of the LUST Trust Fund that relate to this program only, the reality is that most of the States are going to require additional funding in order to take advantage of those opportunities. And while it certainly is not my intention to belabor future appropriations of the LUST Trust Fund today, it's nonetheless important to emphasize that the LUST universe is enormous and we feel the potential is great for seriously affecting human health and the environment. It is our hope that your steps to improve this program will encourage Congress to provide more funding from the larger Trust Fund reserves and with that, I thank you in inviting us back and welcome any questions you may have.

[The prepared statement of Mary Jean Yon follows:]

PREPARED STATEMENT OF MARY JEAN YON, PRESIDENT, ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS

Good morning. I am Mary Jean Yon and I am the immediate Past-President of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). Thank you for inviting ASTSWMO to testify concerning H.R. 688, the Leaking Underground Storage Tank Trust Fund Amendments Act of 1997, introduced by Mr. Schaefer, Mr. Stupak, yourself and many other members of the House.

ASTSWMO is a non-profit association which represents the collective interests of waste program directors of the nation's States and Territories. Besides the State regulatory program managers for underground storage tanks, ASTSWMO's membership also includes the State regulatory program managers for solid waste, hazardous waste, and waste minimization and recycling programs as well as State cleanup and remedial program managers. Our membership is drawn exclusively from State employees who deal daily with the many management and resource implications of the State waste management programs they direct. As the day-to-day implementors of the State and Federal cleanup programs, we believe we can offer a unique perspective to this dialogue.

Specifically, corrective action cleanups in this country for leaking underground storage tanks are performed under the auspices of State regulatory agencies. According to the United State Environmental Protection Agency, 152,683 tank cleanups have been completed since the inception of the program in 1988, but an additional 164,805 tanks await cleanup.

ASTSWMO, therefore, appreciates Mr. Schaefer's intent to provide an increased amount of stability and certainty to these State agencies who implement the tanks cleanup program by directing the Administrator of EPA to provide at least 85 percent of the funds appropriated to the EPA from the LUST trust fund to the State agencies via the cooperative agreement process.

Forty-nine (49) State Agencies are currently awarded cooperative agreements by EPA to support this program. Typically, States use these funds to pay for essential staff who must conduct technical oversight of these cleanups. The State of Florida has submitted an application for a cooperative agreement with the U.S. EPA. Florida's LUST program started in 1986, and we have cleaned up 3,600 sites and have a current universe of 18,000 sites awaiting remediation. Florida has spent $549 million on cleanups and reimbursements since 1986. We have decided to apply for a cooperative agreement because our universe of tanks is so large with a significant number of these tanks representing "hardship" cases, i.e., tank owners who cannot afford to pay for the remediation of their tanks because of bankruptcy or insolvency. We anticipate using our cooperative agreement funds for addressing these hardship sites.

We understand that the U.S. EPA is concerned with prescribing the exact amount of funds to be allocated to the State Agencies in statute. However, for the last five years it is our understanding that the Agency has distributed from 81% to 89% of the LUST trust fund appropriations to the State agencies. This provision in H.R. 688 would merely codify current practices. Codifying current practices may seem an unnecessary use of statutory authority, however, with the eventual disinvestment in EPA's Underground Storage Tanks office, our members are particularly concerned with the future allocations of these trust fund monies given the enormous remaining universe of cleanups. Our most recent estimate of compliance with the 1998 technical compliance standards is now estimated to be 29% complete. This estimate is based on reports from 29 States. This figure is particularly troublesome as a major source of the LUST cleanup candidates is from the universe of tanks being uncovered for upgrade to technical compliance, and therefore, this could be an early warning that an even larger universe of tanks requiring remediation exists. Because underground tank releases will remain a major cleanup problem for a number of years to come, the health and safety risks of these releases are significant and threatening. We are convinced State cleanup programs must continue to receive considerable financial assistance from the federal government in order to be able to address these problems, and support the 85% designation.

Besides introducing an increased level of stability into the LUST program, this bill also seeks to promote better efficiency by allowing the fund to be used for new uses. Specifically, this bill will allow two new uses: 1) State programs will be allowed to incorporate federal trust fund monies into existing State funds; and 2) State agencies will be allowed to use trust fund monies for enforcement purposes (e.g., leak detection inspections).

I will begin by addressing the first suggested new use. As I indicated in the opening of my testimony, the LUST corrective action/cleanup program is implemented by State agencies using either federal LUST trust funds or State trust funds. States use cleanup resources, whether their own or federally provided, only after careful evaluation of risk. Risk-based corrective action now has become the norm for many State underground tanks programs, and the consistent focus is on application of the limited available funding to the highest risk sites. Allowing Federal trust fund money to be placed in State funds will ensure a more streamlined systematic approach to addressing this large universe of sites.

ASTSWMO is aware that some parties have expressed concern with this provision as they believe this will allow federal trust fund money to be used to pay for clean-

ups where viable responsible parties are in existence. This is true as a number of State funds can be used to pay for cleanups where viable responsible parties exist. However, the term "viable" may be subject to different interpretations. We think the most important sector of State tank cleanups where responsible parties are reimbursed are small businesses: the small corner gasoline station, the "mom-pop" business establishments, rural farmers, etc. Many States have made a conscious decision to actively work with these parties, recognizing that the cost of these cleanups may disproportionately place a large share of small businesses out of existence and place the emphasis of their reimbursement effort on this sector. We, therefore, do not believe that the use of the federal trust fund for these purposes would be inappropriate as long as consistent State standards are applied to ensure that the reimbursements are in the best interest of society as a whole and contribute to the safety of human health.

The second new use proposed for the federal LUST trust fund in H.R. 688 would allow States the discretion to allocate money for either cleanups or enforcement. The inspection of potentially leaking underground storage tanks is crucial to stop current releases and prevent future releases. The health hazards associated with the components of gasoline, particularly benzene, are well established by the EPA and federal health agencies. Additionally, the National Water Quality Inventory 1994 Report to Congress confirms that underground storage tanks are the leading cause of national ground water contamination.

We believe States are in a better position to determine where resources should be allocated towards enforcement or corrective action. Some States have a backlog of corrective actions which must be undertaken, whereas other States are in a position to focus more attention on leak prevention. This bill will provide the necessary flexibility to accommodate the most pressing needs at the local level and achieve the most effective use of cleanup resources. We support the new uses as outlined. However, we wish to be absolutely clear that no State agency should be forced to allocate funds to these new resources and that this decision should be left to the States. During the 104th Congress when H.R. 3391 passed through this Committee we were pleased to see that report language was added to the bill which reflected the Committee's desire to allow States to allocate funding as they deemed appropriate. We would request that should this bill proceed forward that similar report language as the following be added at the appropriate time in the process:

> "While this bill allows for several new uses of the LUST trust fund, the legislation does not prioritize among uses. The Committee finds, consistent with testimony heard from the EPA, the States and industry representatives, that funding for existing uses (including enforcement of corrective action requirements, corrective actions taken by State and local government at responsible party sites, and cost recovery actions) most effectively serves the needs for protection of human health and the environment. The Committee also finds that there will be a significant funding need in coming years for enforcement of the tank leak detection and prevention requirements through State and local programs. It is this Committee's desire that the distribution of available federal funding recognize the importance of enforcement to protection of human health and the environment."

We understand that the Agency is concerned that expanding the fund to accommodate these new uses may become an implementation problem as oftentimes the State agency which implements the corrective action component of the underground storage tanks program is not the agency which conducts the enforcement, thus, requiring EPA to issue more than one cooperative agreement to the State. While we believe that the lead cleanup and regulatory agencies are already established in each State, it may be possible to address the concern by having the Governor of each State designate a lead agency for cooperative agreements.

Lastly, we recognize that appropriations are a separate issue, and dealt with by other Congressional committees, and it is not my intention to belabor future appropriations for the LUST trust fund today. H.R. 688 will provide a greater comfort level to State managers by prescribing in statute the minimum amount of funding which must be allocated to the States and should address some of the implementation criticisms associated with this program. However, when we discuss these welcome new authorities with State program managers, they remind us that they probably do not have the option to make extensive use of these authorities at their current annual LUST funding levels. The reality is these new uses will require additional funding which brings us to the classic chicken and egg scenario of whether this improved program authority will encourage Congress to provide more funding from the large trust fund reserves, or whether limited funds will inhibit the use of this new flexibility for State programs. The magnitude of the LUST universe is enormous, the potential for seriously affecting human health and the environment

is substantial, and we believe the money currently available in the LUST trust fund should be allocated.

Conclusion

In conclusion, we believe H.R. 688 will ensure that States are allocated a specific portion of the yearly LUST trust fund appropriation to EPA; provide the States with greater flexibility to implement a program which is inherently a local response; and allow States to make better use of a systematic approach to remediating sites based on risk, rather than certain fund restrictions. Leaking underground storage tanks pose a serious threat to human health and the environment due to the sheer number of their universe and the chemical components contained in these tanks.

We thank the Subcommittee for recognizing the importance of the LUST program and we are available to offer further assistance as needed. I would be happy to answer any questions.

Mr. LARGENT [presiding]. Thank you, Ms. Yon.

Mr. Leiter.

STATEMENT OF JEFFREY L. LEITER

Mr. LEITER. Thank you, Mr. Chairman. I am Jeff Leiter and I appear on behalf of the NACS—the National Association of Convenience Stores and SIGMA, the Society of Independent Gasoline Marketers of America. I will summarize the Associations' testimony.

Both, SIGMA and NACS support H.R. 688, as introduced, and urge its prompt consideration and enactment, along with the Senate companion. Mr. Schaefer indicated that Senator Allard expects to introduce today or in the next few days. The Associations supported the identical bipartisan measure, H.R. 3391, which was overwhelmingly passed last Congress by the House.

Little has changed since NACS and SIGMA testified last July, yet much remains to be done to detect, prevent and correct tank leaks. Further, it is imperative that the tank regulatory situation continue to be assessed and, if necessary, adjusted. The Schaefer/Stupak bills does just this.

As everyone indicates, the keystone to the bill is the statutory pass through of at least 85 percent of the annual appropriation by EPA to the States, using these negotiated, cooperative agreements. I still have a hard time, having listened just now to Mr. Shapiro's testimony, understanding the administration's opposition to this. The States are directing are actual cleanups, not EPA, and I kind of find it hard to find the environmental protection in what appears to us at least, to be a budgetary shell game between EPA and OMB.

Further, when EPA's rhetoric on this is pulled back, we think that the administration is actually quibbling over a small amount of money, maybe $2 or $3 million relative to the Agency's overall budget. And this comes at a time where—I believe I just heard Mr. Shapiro say, "EPA is asking the State Tank Programs to do more, not less under their Federal mandate."

SIGMA and NACS also support the expanded allowable uses of the LUST Trust Fund moneys by the States. The bill has cleanups as a priority still. The Associations are happy that the Agency has recognized enforcement as a priority, not only to protect the environment, but also to keep a level playing field for those who have spent sizable sums of money complying with the law.

NACS and SIGMA remain concerned with EPA's view that the expanded uses will somehow harm tank corrective actions. Again, we think the Agency misses the point of the bill. The States are

in a better position to address tank problems that may be unique to their jurisdiction. Further, many States may be further ahead in addressing tank releases through the use of risk-based cleanups and natural attenuation—letting God be your contractor in remediating these sites. It makes more sense to redirect the use of these moneys through the cooperative agreements. Flexibility should be the watchword. Certainly, I think the testimony from ASTSWMO supports this.

NACS and SIGMA do not oppose the limited use of the Trust Fund moneys by the State tank trust funds to reimburse a limited number of tank owners. Again, I think the EPA's testimony misses the point. This provision was crafted last year on a bipartisan basis and is not bailing out solvent parties. Again, it just deals with a limited number of folks. If they believe it's too broad, perhaps the fix is to change the word "excluding" to "including" in that particular provision and that may satisfy, hopefully, EPA's concern. I thought that's what I just heard Mr. Shapiro saying.

While it was discussed here, the President has included a proposal to increase, both the LUST Trust Fund appropriation, as well as the reinstatement of the LUST Trust Fund tax for other purposes. We can see those purposes, while they talk about a $53 million dollar transfer being solely for deficit reduction purposes. While we support the former, the increase in the appropriation through the cooperative agreements, we oppose the latter, particularly when the revenues would be diverted. This LUST tax, while it's a tenth of a cent, is not an automatic pass through to the consumers, and the already large Trust Fund balance evidences gasolines marketers' contributions to deficit reduction. Accordingly, the Associations urge members of the subcommittee to oppose the reimposition of the tax.

Again, NACS and SIGMA support the Schaefer/Stupak bill as introduced. We appreciate the opportunity to share our views with the subcommittee.

[The prepared statement of Jeffrey L. Leiter follows:]

PREPARED STATEMENT OF JEFFREY L. LEITER, ON BEHALF OF THE NATIONAL ASSOCIATION OF CONVENIENCE STORES AND THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

Thank you, Mr. Chairman. My name is Jeffrey L. Leiter. I am a member of the Washington, D.C. law firm of Collier, Shannon, Rill & Scott, PLLC. I appear today on behalf of our clients, the National Association of Convenience Stores (NACS) and the Society of Independent Gasoline Marketers of America (SIGMA). The Associations appreciate this opportunity to present their views on H.R. 688, the bill introduced by Representatives Dan Schaefer (R-CO) and Bart Stupak (D-MI) and 58 other Members. SIGMA and NACS support H.R. 688, as introduced, and urge its prompt consideration and enactment.

Introduction of NACS and SIGMA

NACS is a trade association representing more than 1,700 retail members operating convenience stores in the United States and around the world. NACS member companies operate more than 60,000 convenience stores across the nation and employ over 500,000 workers nationwide. Over 70 percent of the convenience stores owned by NACS members retail gasoline and diesel fuel, selling an average of 81,000 gallons of gasoline each month.

SIGMA is an association of over 270 independent gasoline marketers operating in all 50 states. In 1995, SIGMA members sold nearly 31 billion gallons of motor fuel, representing about 21 percent of all motor fuels sold in the United States. SIGMA members supply over 28,600 retail outlets across the nation and employ over 208,000 workers nationwide.

SIGMA publishes an annual statistical report, which is a "snapshot" of the size and scope of the companies the Association represents. It is interesting to note that the total environmental expenditures by SIGMA member companies in 1995 exceeded $2.3 million per company, or $28,100 per owned outlet. The Association currently is in the process of collecting 1996 data; however, I expect the environmental expenditure numbers to be comparable.

SIGMA also has surveyed its members where they stand relative to the Environmental Protection Agency's (EPA) December 22, 1998 deadline for upgrading, replacing or closing "existing" underground storage tanks (USTs). In the aggregate, SIGMA members report that 70.4 percent of the outlets they supply already meet the 1998 standards, and they expect to have an additional 24.4 percent up to standards by the deadline. The remaining 5.2 percent of the outlets likely will be closed, rather than be upgraded. Thus, SIGMA members' reported compliance rate with the 1998 deadline appear to be above those estimated by EPA and State UST officials.

NACS and SIGMA testified before the Subcommittee last July 26 on H.R. 3391, the original measure introduced by Representatives Schaefer and Stupak. The Associations supported that bill, along with subsequent modifications worked out by Subcommittee staff. The revised legislation was overwhelmingly approved last September by the full House of Representatives. H.R. 688 is identical to the House-passed bill. Accordingly, SIGMA and NACS today reaffirm their support for the legislation.

Background

Since the LUST Trust Fund legislation was first considered last Summer by the Subcommittee, little has changed with the regulation of USTs that would cause NACS and SIGMA to alter their views toward the need for or the content of H.R. 688. Moreover, despite significant expenditures by regulated entities, including SIGMA and NACS members, much remains to be done. As of December 9, 1996, EPA's Office of Underground Storage Tanks (OUST) reports that there have been 317,488 confirmed UST releases, while only 152,683 clean-ups have been completed. Approximately 600 new releases are reported each week. EPA, States and tank owners are moving rapidly to close this gap through the implementation of "risk-based corrective actions"—an approach supported by NACS and SIGMA.

At the same time, there is the need for a strong enforcement presence to ensure that UST owners and operators are living up to their regulatory responsibilities and that a "level playing field" exists. SIGMA and NACS members, along with other responsible tank owners and operators, have made substantial expenditures to comply with EPA and State UST upgrade, leak detection and financial responsibility deadlines. Their competitive viability should not be injured by a lack of or "half-hearted" commitment to enforcement. Further, as EPA and the States adjust to smaller budgets, it becomes even more imperative that an extremely diverse regulatory community know and see vigorous enforcement as a key to preventing and minimizing tank leaks.

When Congress created the LUST Trust Fund in 1986, it required that UST owners and operators demonstrate the financial ability to clean-up releases and compensate third parties for bodily injury and property damage. SIGMA and NACS—both then and now—agree that tank owners and operators must be responsible for any impairments they create.

One financial assurance mechanism Congress encouraged—and essentially created—was the State tank trust fund. The State tank trust fund is an entirely different mechanism than the Federal LUST Trust Fund—and, intentionally, Superfund. The State-run and financed mechanisms enable tank owners and operators to demonstrate compliance with EPA's financial responsibility rules for petroleum USTs and reimburses them for certain clean-up costs beyond a front-end "deductible" up to specified "caps." Nearly all States have created a tank trust fund, and the most recent annual survey by State tank trust fund administrators reports that 19 States' funds currently have claims that exceed their unobligated balances (up from 11 in 1995).

It is against this partial backdrop that H.R. 688 is being considered. As EPA and the States' UST regulatory programs continue to evolve, Congress, the Agency, the regulated community and others need to assess the uses of the LUST Trust Fund and make necessary adjustments. H.R. 668 does this.

At Least 85 Percent of the LUST Trust Fund Appropriation Should Go to the States

NACS and SIGMA support the central element of H.R. 688—that is, codifying EPA's historical practice by requiring at least 85 percent of its annual appropriation from the LUST Trust Fund be distributed to the States through cooperative agreements. The States generally have and continue to use these monies to operate their

UST corrective action programs, which oversee responsible party clean-ups—that is, corrective actions by tank owners and operators. Clean-ups remain a priority under H.R. 688.

There does not appear to be any debate that the Federal UST law creates an unfunded—or, underfunded—mandate for the States. However, EPA, in its testimony last Summer on H.R. 3391, has questioned a statutory 85 percent minimum State share, arguing that its past behavior should be indicative of its intent to provide the majority of future, annual appropriations to the States. Moreover, the Administration, in the closing days of the 104th Congress, opposed H.R. 3391 in the Senate on the basis that the 85 percent threshold was somehow violative of the Executive Branch's budgetary process and could set precedents for other environmental programs, such as Superfund.

SIGMA and NACS are not persuaded by EPA's previously articulated argument and believe the Administration's opposition from last Fall is misplaced. The Associations, as opposed to their testimony last July, now understand that EPA has withdrawn a budget proposal that would have phased out OUST, beginning in fiscal year 2001. Nevertheless, even with the rejection of this proposal, it is reasonable for the regulated community to expect a reduced Federal role in the future. OUST has as one of its priorities the approval of as many of the remaining State UST programs as possible. Once approved by EPA, the State tank programs operate in lieu of the Federal UST regulations. Thus, if it makes good public policy for EPA to encourage and build strong State UST programs, Congress should send a clear message to the States that LUST Trust Fund monies should not and will not be compromised by EPA or the Office of Management and Budget (OMB) at a time when the Federal UST program is depending on the States to do more. A "trust us" approach just does not make sense.

Further, while NACS and SIGMA understand that the allocation and expenditure of the annual LUST Trust Fund appropriations are intertwined with EPA's overall budget, the Associations fail to understand how a statutory 85 percent threshold disrupts the Executive Branch's budget process. Unless EPA and OMB budget analysts have some future plans for keeping a significant percentage of the LUST Trust Fund appropriations "in house," the Administration seems to be "drawing a line in the sand" over, at most, three or four historical percentage points or, stated differently, three or four million dollars. SIGMA and NACS find it hard to believe these amounts, while beneficial to State UST programs carrying out a Federal mandate, will "break" EPA's budget. Hopefully, EPA will explain more fully its and the Administration's position and thinking on this point at today's hearing.

Allowable LUST Trust Fund Uses Should be Expanded

SIGMA and NACS support the expanded uses of the LUST Trust Fund monies by the States as set forth in Subsection (1) of H.R. 688, particularly for enforcement of UST technical standards (Subsection (1)(A)(iii)). There are three primary reasons the Associations support the expansion of the allowable uses.

First, the expansion provides increased flexibility to the States to address UST problems that are unique to their jurisdictions. For example, some States may be further along with their corrective action programs and would be better served shifting the funds into enforcement, which hopefully prevents leaks from occurring.

Second, each of the allowable uses in H.R. 688 are consistent with Congress' intent since 1984 to prevent, detect and promptly correct UST releases. The first permitted use (Subsection (1)(A)(i)) in H.R. 688, is existing law, while the fourth one (Subsection (1)(A)(iv)) acknowledges Congress' approval of EPA's historical practice of allowing the overwhelming majority of the LUST Trust Fund pass-throughs to the States to be used to oversee corrective actions by responsible parties—that is, tank owners and operators. Thus, State use of the LUST Trust Fund monies for State tank trust funds (Subsection (1)(A)(ii)) and enforcement (Subsection (1)(A)(iii)) are the only real new uses under the legislation, and they are legitimate and necessary uses.

Third, the LUST Trust Fund has an unobligated balance today in excess of $1 billion. Moreover, this year's expected interest on this unobligated balance should near or exceed the fiscal year 1997 appropriation to EPA. NACS and SIGMA want to make it very clear to the Subcommittee that the petroleum marketing community has been and remains prepared to do its share to reduce the Federal budget deficit; however, it should not be unreasonable for petroleum marketers to expect a return of the LUST Trust Fund monies for the permitted uses under H.R. 688 when the motor fuels excise tax used to finance the LUST Trust Fund largely was not passed through to consumers in the selling price of gasoline and diesel fuel. To this end, the Associations are committed to working with the Appropriations Committees to maintain and, if possible, increase the LUST Trust Fund appropriation.

State Enforcement and Tank Trust Funds Should be Appropriate Uses

SIGMA and NACS do not envision opposition from any quarter that the States be allowed to use LUST Trust Fund monies for enforcement of UST technical standards. In addition to the leak prevention gains I noted earlier, appropriate enforcement is necessary so as not to reward tank owners who have chosen to ignore EPA's ten-year upgrade period for those USTs that were in the ground and operating on December 22, 1988. NACS and SIGMA members, as well as others, have spent hundreds of millions of dollars complying with the law, and they expect enforcement so as not to render their economic expenditures meaningless.

NACS and SIGMA also support the use of LUST Trust Fund monies for enforcement because of concerns with Federal enforcement after December 22, 1998. OUST has announced a joint leak detection enforcement sweep with the States this May and has asked the EPA Regions to make UST leak detection a priority in fiscal year 1997. However, EPA enforcement planning documents for fiscal year 1998, which were leaked to the trade press, do not even mention USTs as an enforcement priority in the fiscal year when the critical compliance deadline falls. Hopefully, these documents are not the final word from the Agency, but it appears that OUST and the Office of Enforcement and Compliance Assurance are not on the "same page." While EPA may rely primarily on the States to take the lead in enforcing the December 1998 deadline, the Agency should exert strong leadership and should be willing to step in and enforce if a State fails to do an adequate job. EPA owes as much to the regulated community that has obeyed the law and that has made significant expenditures.

The Associations also are aware of EPA and Members' concerns last year with the use of LUST Trust Fund monies by State tank trust funds to reimburse tank owners and operators for certain clean-up costs. These concerns largely have been couched in terms of Superfund's "polluter pays" policy. SIGMA and NACS strongly disagree with this characterization, particularly when Congress made State tank trust funds an acceptable financial assurance mechanism and encouraged such State reimbursement funds financed through tank fees paid by UST owners or operators.

Notwithstanding such disagreement, NACS and SIGMA concur with Subsections 1(A)(ii) and (v) in H.R. 688, providing that State trust funds could use the Federal LUST Trust Fund appropriations only for reasonable and necessary administrative expenses, except where limited funds are needed to reimburse a tank owner or operator who has cleaned up a leak and who, but for the reimbursement with the Federal monies, would be forced out of business.

Summary

NACS and SIGMA believe that the enactment of H.R. 668 is an important step in increasing State flexibility as an important UST regulatory deadline—that is, December 22, 1998—approaches. The expanded uses of the LUST Trust Fund monies all are based on the desire to increase protection of human health and the environment. The Associations believe that H.R. 688 is a balanced and reasonable bill that should proceed immediately through the legislative process on a bipartisan basis.

NACS and SIGMA appreciate this opportunity to present their views. I will be happy to answer any questions the Associations' testimony may have raised.

March 18, 1997

Hon. MICHAEL G. OXLEY
Chairman
Subcommittee on Finance and Hazardous Materials
Committee on Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Re: March 20, 1997 Hearing on H.R. 688

DEAR MR. CHAIRMAN: This letter and attachment accompany my testimony before the Subcommittee on Finance and Hazardous Materials on H.R. 688 on behalf of the National Association of Convenience Stores (NACS) and the Society of Independent Gasoline Marketers of America (SIGMA).

Pursuant to Rule XI, clause 2(g)(4) of the Rules of the House, and Rule 4(b)(2) of the Committee, I acknowledge that I have received no federal grants or contracts during the current fiscal year or either of the two preceding fiscal years.

As requested, I have attached a copy of my personal profile.

Sincerely,

JEFFREY L. LEITER

Mr. LARGENT. Thank you, Mr. Leiter.
Mr. Daskal.

STATEMENT OF DIMITRI G. DASKAL

Mr. DASKAL. Good morning—or good afternoon. I'm still on California time having just come in on the red eye. Mr. Chairman, members of the committee. My name is Jim Daskal. I'm counsel to the National Coalition of Petroleum Retailers, which is a "Mom and Pop" organization, primarily representing single station owner/operators throughout the United States.

I've summarized my testimony and I wanted to really react to some of the statements we heard from EPA today, because they tell us why we need to be here and why we need this legislation. Specifically, we have always been concerned that the underground tank office, which we have always regarded as the best run shop among the myriad of shops that we have to deal with within EPA, was going to, if not be totally phased out of business, at least be reduced to a skeletal level. And we're still not sure, after what we heard today, what was going to happen. But we support the 85 percent requirement being written into law precisely because of our concern that the LUST money was going to be diverted to other uses, such as the Underground Injection Program. And I have to say, particularly for the dealers in Long Island being, probably exhibit A, that for the LUST money to go into the Underground Injection Program, would simply cause just an absolute eruption among my people. Where this issue arose was several years, or actually 4 or 5 years ago, one of the EPA regions discovered that the service statement bay drains that we have are Class V, hazardous waste injection wells, and all of the sudden we had people coming in cementing them over, threats of massive fines, a consent decree was signed with the major oil companies and it was an issue that really never, I think, was fully considered, either by the Congress or by EPA. But certainly, to use LUST money in the Underground Injection Control Program would cause my people to literally come unglued at the seams.

With respect to reimposition of the LUST tax, that ties in to this issues. Simply put, there's no way for one of my people to put a tenth of a cent of a gallon on the street. Nobody is going to go from $1.29.9 to $1.30.0, they're simply going to swallow the one-tenth of a cent per gallon. That's why we look at it as our money and we want it to go to the provision we fought for so hard in 1986. It's unfortunate that Mr. Tauzin is not here, because he was very much the key player in the adoption, at least in the House version, of the LUST Trust Fund provisions in 1986, which was designed in the House bill as a liability cap, as opposed to what it became as we went through the Senate.

But in any event, the two goals of the legislation as we see it are to provide flexibility and funding to the States. And that's what we think is absolutely imperative as we go forward. One of our big concerns that we've addressed in our testimony is what we call the 1998 bubble that's going to be coming up. And what we mean by that is because some people have delayed compliance dates, but for my people, our specific concern is that we have a large number of people whose franchises are coming up for renewal under the Pe-

troleum Marketing Practices Act and under that statute, a franchisor who decides they don't want to make the investment in the location, and decides not to renew the franchise based on the idea that it's uneconomical to renew it, has to offer to sell the property to the dealer. And so suddenly, you have this "Mom and Pop" operator becoming a tank/owner operator for the first time by operation of Federal laws. So it's not a case where this person delayed doing the right thing with respect to upgrading the tanks. Generally, they've been contractually prohibited from even touching the tanks, and that's the category of person that we're most concerned about.

We do share the concern with NACS, SIGMA and PMAA that those who simply have had the ability to comply, but have failed to comply, should be subjected to strong enforcement actions. One of the few EPA economic models that we happen to agree with is a model that they call the Ben model, which tries to measure the benefit to a party of not complying with a Federal regulation. And we feel that those people are in effect, receiving an indirect competitive subsidy.

Our sole concern with the bill lies in the area of the prohibition on the use of Federal funds for those States, which there are 13, that go beyond cleanup and offer a grant and loan programs to primarily small stations. For example, Delaware has a small station fund; California, if you're below a certain level, they will make grants and loans to these small marketers. Now, we understand that in 1986 we were told point blank by the Senate, that when we created this LUST Trust Fund, this was not going to become a public works program for service station dealers. Simply put, Congress has not tread into this area, and while my folks don't like the prohibition, getting the bill passed is more important than fighting over the prohibition. We would simply like to see some clarification in the report language to note that the rationale for the prohibition is simply that Congress is reaffirming the decision made in 1986 not to get into this area, as opposed to making any sort of a value judgment as to the wisdom of the States in enacting grant and loan programs.

We feel that it's the province of the States and should be left that way and we would just ask that the legislative history of this bill retain the traditional Congressional policy of absolute neutrality. That hits our main highlights, so I will conclude by urging the subcommittee to move this legislation as written as quickly as possible and to oppose reimposition of the LUST tax and with that, I thank you very much for the opportunity to be here today.

[The statement of Dimitri G. Daskal follows:]

PREPARED STATEMENT OF DIMITRI G. (JIM) DASKAL, COUNSEL, NATIONAL COALITION OF PETROLEUM RETAILERS

SUMMARY OF TESTIMONY

1. The National Coalition of Petroleum Retailers (NCPR), serves as the chief advocate of the interests of America's 50,000 "mom and pop" independent gasoline retailers. We strongly support HR 668, as we supported HR 3391 before this Subcommittee and through passage by the House last year.

2. While many talk the talk of "common sense initiatives" HR 668 walks the walk along the path of common sense, by ensuring that the underground tank program, a model of a successful state-federal regulatory program will continue to serve as

the leading example of what can be accomplished when federal, state, and local governments work in cooperation with the regulated community towards the goal of cost-effective protection of human health and the environment.

Those who talk the talk, must now be ready to walk the walk, and recognize that the UST program is an example for other Agency "shops" to follow, and that the UST program stands in marked contrast to other regulatory initiatives such as: (a) EPA's procedurally deficient, heavy handed, fine hungry, attacks on gas station and garage service bay drains, which no one considered to be "Class V Injection Wells"; the "UIC" program. (b) EPA Regional Offices launching Superfund attacks on the very people who have voluntarily done the most to mitigate the effects of over two hundred million gallons of "do-it-yourselfer" used oil being dumped into our environment each year, and even dragging our members who recycled oil at certain sites pursuant to the urging or compulsion of state and local governments into the Superfund quagmire; and (c) EPA's failure to comply with the Small Business Regulatory Enforcement Fairness Act with respect to what is the most potentially costly rulemaking of all: the proposals to tighten the ozone and particulate matter National Ambient Air Quality Standards on the "rationale" that this rulemaking would not have a major impact on small business. In fact many areas would be redesignated as a matter of law; and would be compelled by the statute to adopt control measures such as enhanced vehicle inspection and maintenance (I and M), and redundant Stage II vapor recovery controls. The latter is an extremely costly proposition that would cause a large number of station closures in areas such as rural Ohio, and in effect "Robs Peter to Pay Paul"; because our members limited resources would be diverted from compliance with the 1998 underground tank regulatory deadline, where they would most benefit human health and the environment.

3. With the 1998 deadline fast approaching, and EPA's Office of Underground Storage Tanks slated to fade from the scene, it is more important than ever that the states, who bear the primary responsibility for the UST program in any event, be given the tools needed. i.e. *funding and flexibility* to ensure that this program remains a model of what a public sector/private sector team can accomplish.

4. The pressure on the states is only going to increase as the deadline nears. It is very important that policy makers at all levels of government be aware of the fact that thousands of gasoline station franchise agreements will be coming up for renewal; and franchisors will be required to decide whether or not to make the investment in upgrading the facility.

In the event the franchiser decides that it does not wish to make the investment; the Petroleum Marketing Practices Act, 15 U.S.C. 2801, 2802(b)(3)(D), requires that an offer to sell the leased marketing premises be made to the franchisee. As a result, many stations and their tanks will be sold and replaced in the remaining 21 months.

Many will simply close, and such closure must be done in accordance with existing federal and state regulations.

NCPR expects a significant "1998 Bubble" to occur, that will stress the resources of states and their existing underground tank trust funds, as locations are closed and existing contamination is discovered. Accordingly it is absolutely critical that the UST funds not be diverted to other uses such as deficit reduction and the Underground Injection Control Program. We must remain faithful to the original intent of this program; and to put our limited resources where we will get the most environmental bang for the buck; the UST program. We must maximize available UST funding, not divert it to political pet programs.

5. Flexibility, as well as funding must be given to the states to the maximum extent possible. While we recognize the political realities involved in getting this worthy legislation passed, NCPR would prefer that greater flexibility than that incorporated in HR 668 be granted to the states, such as that contained in HR 3391, as introduced in the 104th Congress.

For example, NCPR believes that states should have the flexibility to use federal UST funds in state financial assistance programs for small marketers. The simple fact of the matter is that an "ounce of prevention" in the form of upgrading tanks to prevent leaks from occurring in the first instance is far more cost effective than the "pound of cure" represented by corrective actions, even risk based corrective actions (Rebecca's) after a leak has occurred.

Nevertheless, we recognize that such use of the federal fund has never been permitted, and that others whose support is needed if we are to achieve our common goal of enacting HR 668 as quickly as possible do not share that goal.

6. The prohibition on the use of federal funds in state financial assistance programs is in need of clarification, at a minimum in the Report language, in order to avoid possible challenges based upon federal preemption, or an allegation that a

state that receives funds through a cooperative agreement somehow runs afoul of this prohibition if additional funds are placed in financial assistance programs.

States from California to Delaware have enacted financial assistance programs, often using very strong legislative language on the issue of whether such programs are in the best interests of the citizens of the state. For example, California's "Barry Keene Underground Tank Fund" expressly declares that it is in the best interest of the people of the state to provide financial assistance to small businesses, farmers and other tank owners.

The choices of the state legislatures that have enacted these programs must be respected. It must be made clear that Congress is simply electing not to venture into an area that it has not ventured into before, and is not questioning the wisdom of those states that already have, or may in the future enact financial assistance programs.

7. NCPR strongly disagrees with the notion that allowing federal funds to be used in state upgrade programs is a "subsidy to competitors" or allows those who have delayed coming into compliance a form of special treatment.

Many of our members have been contractually prohibited from touching the tankfield at their stations, yet, as previously discussed, these same people are going to be placed into a "buy or die" situation by operation of the PMPA NCPR joins the call for strong enforcement of the regulations against true recalcitrants.

Those who refuse to comply are the people who are receiving a competitive subsidy, as evidenced by application of EPA's "*BEN*" model, which measures the economic benefit to a party that comes about by avoiding regulatory compliance and the costs that come with compliance.

When one of our members receives money from a state program to do an upgrade, it almost always is in the form of a loan. Substantial debt service is acquired, and it is very difficult to pass through such costs due to the competition that exists in retail gasoline marketing.

There are many government subsidies, such as the ethanol obscenity, that affect gasoline marketing: state financial assistance programs are literally a drop in the bucket by comparison.

Thus, it is NCPR's position that the "subsidization" issue provides no basis for prohibiting use of federal money in state financial assistance programs—the basis for any prohibition must be the desire of Congress to remain in the position *of absolute neutrality.*

8. NCPR supports strong enforcement against those parties that are able to, but unwilling to comply with their regulatory obligations, for it is they who are being effectively subsidized, and competing unfairly with our members.

9. NCPR's members have had to swallow the LUST tax, because there is no way to put a tenth of a cent per gallon on the street—indeed we have had to swallow most of the 4.3 cent per gallon portion of the gas tax earmarked for deficit reduction in what has been a terrible precedent, that should never be repeated.

Accordingly, our members were very disturbed to hear that the Administration may be proposing today use of the LUST money for purposes such as funding the out of control "UIC" offices in the various Regional Headquarters. NCPR is adamantly opposed to any such non-UST related use of our money.

RULE 4(B)(2) STATEMENT

I hereby certify that neither I, nor the National Coalition of Petroleum Retailers receive any federal grant or other funding whatsoever.

Mr. LARGENT. Thank you, Mr. Daskal.

Mr. Lykins.

STATEMENT OF JEFF LYKINS

Mr. LYKINS. Thank you, Mr. Chairman and members of the subcommittee. My name is Jeff Lykins and I'm Vice President of Lykins Companies in Milford, Ohio. I want to thank the subcommittee for scheduling a hearing on H.R. 688, as this legislation is of critical importance to petroleum marketers across the country and from my State. I'm here today to testify on behalf of the Ohio Petroleum Marketers Association, the OPMA, and the Petroleum Marketers Association of America, the PMAA.

First, I'd like to give you a little background on myself and my company. Lykins Companies is a family owned and operated business. We serve 32 counties in Ohio; six counties in southeastern Indiana; and 11 counties in northern Kentucky. Overall, including our transportation company, we operate in 15 States. We sell a total of 126 million gallons of petroleum per year and we own and operate over 80 underground storage tank systems. So I can assure you that this issue is of great importance to myself, my company, and the communities we serve.

The PMAA has been working with the Congressional staff for many years now to secure the States their fair share of the Federal funding under the LUST Program, and to allow them greater flexibility within the program. PMAA and OPMA are pleased to see that the House members are interested in moving forward on this legislation again this year. PMAA and its marketer members have worked to secure the passage of H.R. 688, as an essential step in helping ensure that States continue to receive the lion's share of the Federal LUST Funds. As you know, H.R. 688, if passed, would achieve several important objectives.

First, the legislation would ensure that States, by statute, would receive at least 85 percent of the money appropriated by Congress yearly for LUST programs. PMAA strongly believes that this provision is critical to the States to ensure that they are given resources necessary to carry out the obligations under the Federal LUST Program mandates. It would be an injustice to the States if they were to lose the additional funding for their responsibilities, because they're the very entities which Congress made responsible for carrying out the requirements under RCRA.

If States do no continue to receive the bulk of the money appropriated, the requirements for leaking underground storage tanks would quickly become an unfunded Federal mandate. Passage of H.R. 688 would, at the very least, assure the States their share of the Federal funding, especially as budgetary constraints grow tighter.

Second, the bill would give States and tank owners and operators a greater voice in the allocation process. The bill provides that, should EPA want to change the current allocation formula, it must consult with the State administrators and representatives of tank owners and operators. The bill also uses the EPA's current allocation formula and adds an additional criteria that EPA should take into consideration. Under H.R. 688, EPA would be required to also take into account the amount of revenue received into the Federal LUST Fund from a given State.

The bill requires that these criteria be considered at a minimum, but does not prevent EPA from adding additional criteria after consulting with the regulated community. PMAA feels that this is an important provision because States are ensured that there will be a variety of criteria considered, including the amount of money States have paid into the fund.

Third, the bill will allow the States greater flexibility regarding their use of the funds. PMAA believes that this is essential, because as States face greater demand for the cleanup funds, and additional administrative and enforcement costs, Congress should provide the greatest flexibility possible. With the 1998 tank dead-

lines quickly coming upon us, there will be a peak demand period for the funding at the State level. PMAA stands behind the EPA deadline, but also believes that the States must be given the maximum amount of funding possible to fulfill their obligations.

Every State faces a different situation with regard to their respective programs. The bill will allow the States to use the money for administration, enforcement, and to aid, at a minimum, tanks owners or operators who face financial hardship.

Using EPA's figures, approximately 99 percent of the money appropriated each year goes for administration and enforcement of the LUST Program. And approximately 1 percent is spent on the cleanup of orphan tanks. An example of that means, that out of the $69.3 million dollars appropriated for the program in fiscal year 1995, it was only about $693,000 that went to cleanup sites, orphan tanks. The rest of the money appropriated in fiscal year 1995, about $68,607,000 went for the administration of the oversight program.

Responsible parties, like myself and other marketers, will continue to cleanup sites, but PMAA feels strongly that States should be allowed flexibility to make a decision, in certain cases, to use Federal funds for actual cleanups. As of May 1995, EPA had cleaned up 880 tanks, and private tank owners had cleaned up over 100,000. PMAA's position has been and remains that the bulk of the cleanups need to be done in situations where the owner or operator can be identified, but may need financial assistance due to financial stress.

Now, we have a Federal fund with over a billion dollars sitting idly, while States and marketers go broke trying to administer the program and cleanup sites. And, the yearly appropriation level continues to dwindle.

To make matters worse, the President has proposed to reinstate the LUST tax. If Congress were to spend the existing money from the LUST Fund at its current appropriation level, there would be enough money to fund a spend out over the next 20 years, without any new taxes. PMAA and OPMA believe it is clear that the President wants this tax for deficit reduction purposes only. We strongly oppose a reinstatement of the tax for that purpose. Until Congress makes a good faith effort to spend down the existing funds, there is no need for a new tax.

In addition, we're particularly disheartened to learn that, despite EPA's vigorous argument opposing the percentage mandate last year, they now want the existing LUST Funds to be diverted from the LUST Trust Fund, and to be used for other purposes. We staunchly oppose such a move, and find quite frankly, that EPA's change in position flies in the face of arguments made by them last year in similar legislation.

To tax the American people for a specific environmental purpose, and then to arbitrarily change the purpose for which those funds can be spent, is not dishonest, but it's contrary to the original intent of the LUST Program. I can assure you that the PMAA, at least, believes that States are closer to the problem and can make more competent decisions with regard to the LUST Program and spending the money wisely. And with EPA's recent change in atti-

tude, it seems increasingly more critical that States get their fair share of the money before they lose access all together.

We urge the subcommittee to approve this important legislation and expedite its consideration by the full committee and Congress. There has probably never been a greater need to ensure States of their fair share of the Federal money, and to offer them increased flexibility. On behalf of the PMAA and the OPMA, I urge your support for H.R. 688 and would be happy to answer any questions. Thank you.

[The prepared statement of Jeff Lykins follows:]

PREPARED STATEMENT OF JEFF LYKINS ON BEHALF OF THE OHIO PETROLEUM MARKETERS ASSOCIATION AND THE PETROLEUM MARKETERS ASSOCIATION OF AMERICA

Thank you Mr. Chairman and members of the Subcommittee. My name is Jeff Lykins and I am the Vice-President of The Lykins Companies in Milford, Ohio. I want to thank the Subcommittee for scheduling a hearing on H.R. 688, as this legislation is of critical importance to petroleum marketers from my state and across the country. I am here today to testify on behalf of the Ohio Petroleum Marketers Association (OPMA) and the Petroleum Marketers Association of America (PMAA).

I would like to first give you a little background on my company. The Lykins Companies, Inc. is a family owned and operated business that serves 32 counties in Ohio; 6 counties in Southeastern Indiana and 11 counties in Northern Kentucky. Overall, The Lykins Companies operates in 15 states. The Lykins Companies sells a total of 126,000,000 gallons of petroleum per year and owns and operates over 80 underground storage tank systems. So, I can assure you, that this issue is of great importance to me, my company and the communities that I serve.

PMAA has been working with Congressional staff for many years now to secure states their fair share of federal funding under the federal Leaking Underground Storage Tank (L.U.S.T.) program and to allow them greater flexibility within the program. PMAA and OPMA are pleased to see that House members are interested in moving forward on this legislation again this year.PMAA is a federation of 41 state and regional trade groups representing over 9,000 small, independent petroleum marketers. Collectively these 9,000 marketers sell half the gasoline and 60% of the home heating oil consumed in the U.S. annually. OPMA represents approximately 300 marketer companies and 500 companies overall. Overall, OPMA represents marketers who distribute 55% of all the petroleum; 90% of the heating oil and most of the lubricants sold in Ohio.

PMAA and its marketer members have worked to secure passage of H.R. 688, as an essential step in helping ensure that states continue to receive the lion's share of federal L.U.S.T. funds. As you know, H.R. 688, if passed, would achieve several important objectives. First, the legislation would ensure that states—by statute—receive at least 85 percent of money appropriated by Congress yearly for the L.U.S.T. program. PMAA strongly believes that this provision is critical to states to ensure that they are given the resources necessary to carry out their obligations under the federal L.U.S.T. program mandates. It would be an injustice if states were to lose additional funding for their responsibilities, because they are the very entities which Congress made mostly responsible for carrying out the requirements under RCRA.

If states do not continue to receive the bulk of the money appropriated, the requirements for leaking underground storage tanks would quickly become an unfunded federal mandate. Passage of H.R. 688, would—at the very least—assure states of their share of federal funding, especially as budgetary constraints grow tighter.

Secondly, the bill would give states and tank owners and operators a greater voice in the allocation process. The bill provides that, should E.P.A. want to change the current allocation formula, it must consult with the state administrators and representatives of tank owners and operators. The bill also uses E.P.A.'s current allocation formula and adds an additional criteria that E.P.A. should take into consideration. Under H.R. 688, E.P.A. would be required to also take into account the amount of revenue received into the federal L.U.S.T. fund from a given state.

The bill requires that these criteria be considered "at a minimum", but does not prevent E.P.A. from adding additional criteria after consultation with the regulated community. PMAA feels that this is an important provision because states are ensured that there will be a variety of criteria considered, including the amount of money states have paid into the fund.

Thirdly, the bill would allow states greater flexibility regarding their use of the funds. PMAA believes that this is essential because, as states face greater demand for the clean-up funds and additional administrative and enforcement costs, Congress should provide the greatest flexibility possible. With the 1998 tank deadlines quickly coming upon us, there will be a peak demand period for funding at the state level. PMAA stands behind the E.P.A. deadline, but also believes that states must be given the maximum amount of funding possible to fulfill their obligations.

Every state faces a different situation with regard to their respective program. The bill would allow states to use money for administration; enforcement and to aid—*at a minimum*—tank owners or operators who face financial hardship.

PMAA feels that this provision should be included for a variety of reasons. Primarily, PMAA urges Congress to aid in the clean-up of leaking underground storage tanks because that was the purpose intended when the fund was created. Unfortunately, only 1 percent of the money has been used for actual clean-up—and that has been for the clean-up of orphan tanks where the owner or operator could not be identified. Clearly, there is a community need for the money to be used for actual clean-ups.

Using E.P.A.'s figures, approximately 99% of the money appropriated each year goes for administration and enforcement of the L.U.S.T. program and approximately 1% is spent on the clean-up of orphan tanks. For example, that means that, out of the 69.3 million dollars appropriated for the program in FY '95, only about $693,000 went to clean-up sites (orphan only). The rest of the money appropriated in FY '95—$68,607,000—went for the administration and oversight of the program.

Responsible parties will continue to clean-up sites, but PMAA feels strongly that states should be allowed the flexibility to make a decision, in certain cases, to use federal funds for actual clean-ups. As of May, 1995, E.P.A. had cleaned up 880 tanks (partially because they can only use federal money for orphan tanks) and private tank owners had cleaned up over 100,000 tanks. PMAA's position has been and remains that the bulk of clean-ups need to be done in situations where the owner or operator can be identified, but may need financial assistance due to financial stress.

Now, we have a federal fund with over a billion dollars sitting idly, while states and marketers go broke trying to administor the program and clean-up sites. And, the yearly appropriation level continues to dwindle.To make matters worse, the President has proposed to reinstate the L.U.S.T. tax. If Congress were to spend the existing money from the L.U.S.T. fund at its current appropriation level, there would be enough money in the fund to spend out over the next twenty years—WITHOUT A NEW TAX. PMAA and OPMA believe that it is clear that the President wants this tax to be reinstated for deficit reduction purposes. PMAA and OPMA strongly oppose a reinstatement of the tax for this purpose. Until Congress makes a good faith effort to spend down the existing funds, there is no need for a new tax.

Under the Schaefer/Stupak bill, states would be able to spend the money for tank clean-up, administration and enforcement—wherever they believe their states could most effectively use the money. I can assure you that PMAA (at least) believes that states are closer to the problem and can make a more competent decision with regard to the L.U.S.T. program and spending the money wisely.

PMAA urges the Subcommittee to approve this important legislation and expedite its consideration by the full Committee and Congress. There has probably never been a greater need to ensure states of their fair share of the federal money and to offer them increased flexibility. On behalf of PMAA and OPMA, I urge your support for H.R. 688 and would be happy to answer any questions you may have.

Mr. LARGENT. Thank you, Mr. Lykins. I would like to give this foursome an opportunity to respond to Mr. Shapiro's testimony. I would ask each of you to respond, if there were any issues that were included in his testimony, that either raised or relieved concerns that you have about the EPA's position on H.R. 688 or the LUST Fund; or the diversion of funds; or anything like that as you listened to from his testimony, any lights that went off, that you have an opportunity now to have you respond to that.

We can start the microphone here and go back this way, if you'd like.

Mr. DASKAL. Mr. Chairman, obviously, we had heard rumors that they were going to propose using the funding in the Underground Injection Program and for ground water protection, and obviously

that gave us some heartburn. We had some comfort with the idea that the underground storage tank office is not going to be going away. One point that we would like to address is the issue of the States having flexibility to reimburse owner/operators in certain conditions with Federal money. That was an issue that was vigorously contested or discussed during the 1985, 1986 debate, and in the report of, then the Energy and Commerce Committee, and I believe one of the other referring committees, because this was actually, the Trust Fund came about as part of the Superfund process in 1986. EPA was specifically directed not to seek cost recovery against those parties who had complied with the regulations and had run into hardship. It was almost a good faith effort test, if you will. And I didn't see any hint of that in Mr. Shapiro's testimony, although recognizing that it may have been in summary form. But still, we hope the Agency is still paying heed to that directive that this committee gave in 1986.

Mr. LARGENT. Any other witnesses like to respond? Yes, Mr. Leiter. If you could make your answers brief, so we can get a comment from everybody.

Mr. LEITER. I've got four quick points, I'll try to make. I think Mr. Tauzin was starting to get at it in his questioning. As I understood it, when EPA was before the subcommittee last July, the Agency said it could not support last year's bill. And then when it got over to the Senate, after the House passed it, the statement of the administration said, "Opposed." And I understand there's a difference between not supporting and opposing in terms of the jargon of whether the President will veto it, or whatever. It was interesting they've gone back to saying, "We can't support. We've got some concerns." I guess what I'm trying to think, if a couple of those concerns are eliminated, whether that can change the administration's mind on the bill and hopefully support it.

There were three concerns that were raised in the testimony. First, that this would somehow dilute cleanups. And I guess I'm still trying to struggle with this "chicken and egg" type of situation. While they're saying that limited dollars would go to enforcement, that seems to be okay, but the other permitted expanded uses in the bill, somehow would dilute cleanups. And I think a lot has changed from when this program was originally put together, as to how cleanups are handled by the States—the increasing use of risk-based cleanups; less intervention by the States, in terms of how they're actually overseeing day-to-day the cleanups, and that perhaps you don't need the money.

At the same time, there was an exchange, I think, with either Mr. Deal or Mr. Ganske, about the effect on administration personnel with the amount of money that they keep and this might force people to lose their jobs here. It goes the other way as well, if they keep more in here and divert it to other purposes, we're losing those State people that are overseeing the cleanups and where do you want those dollars to be.

The second concern dealing with the use of reimbursing tank owners, I think during my testimony I said you could change the word "excluding" to "including" in 1(A)(v), and that, maybe, might satisfy the administration's concern in that particular area.

Last, with respect to the 85 percent, again, I just personally believe that this has nothing to do with what's right for the environment, but rather budget people, either at OMB or in the management part of EPA, dictating to the folks on the front lines that this has to be done for some accounting purpose, rather than protecting the environment. I'd like to see the subcommittee, perhaps, flesh that out in some way with the Agency and the administration, while this goes to markup or full committee.

Mr. LARGENT. Thank you, Mr. Leiter.

Ms. YON. Thank you. I feel obliged to lead off with a statement that the States really and truly have enjoyed a very good working relationship with EPA in this program. It is unlike most others, but nonetheless, the proposed additional uses of the fund came as a big surprise to us today also. And I really don't see that that's something, while we are sympathetic to budget woes because we all have that in our own individual States, it's not something that the Association feels like they could support in terms of a change to the bill as it now stands. We feel that the bill, as crafted, gives us some certainty by using the 85 percent level, that there will be funding in the future. And I think when you hear testimony like we just heard, you see a temptation to use money for different things. You see a hesitancy of how much of a presence to keep in the program and that brings us back to having great comfort in that 85 percent level. And I would just close by reminding everyone of the huge obligation, that we, as States feel, to get these sites cleaned up. So that's in large part what would drive any opposition we would have to proposed extra uses of the fund.

Mr. LYKINS. I have a tendency, being a business person and growing up in a family business, to kind of break things down to the simplest level so that I can understand it. To me, the idea of EPA stating that, "Well, we're giving 86 percent now, trust us." And then to come in here, at the last minute, and say, "We might want to use this money for something else." It just exemplifies the reason why we need this rule. And as far as the way the States use it, I think each State is going to have a different way to do that. I can tell you how it affects me in Ohio with my company, and that is that we've gone to a RBCA based management system—risk based, and it's working very well in Ohio. And it's starting to get some sites cleaned up that were kind of just laying there. The problem we're having is hiring and keeping competent people to monitor that. And that's the place where this money would become very useful. Now, that costs me jobs and money because we shut down a site to do the cleanup and what should take a month to do a cleanup, is now taking 3, 4, 5 and 6 months. That's 5 or 6 months that I have a unit down, that I have people out of work and I have rural areas that are driving miles to get petroleum. And a lot of those are my own company operations. A lot of those are my customers which are a lot of Mr. Daskal's constituents. That was my final comment. Thank you.

Mr. LARGENT. Thank you, Mr. Lykins. The gentleman from New York.

Mr. MANTON. Thank you, Mr. Chairman. This is addressed to all the panel, and I'll ask each of you for a brief comment.

During the hearing on this subject last year, I asked the panel "What, in each person's view, should be the priorities for the States' expenditure of Federal LUST Trust Fund dollars?" I'd like to ask today, whether the general consensus at that time, that the fund should be used primarily for enforcement and overseeing cleanups, is still shared by the panel.

Let's start with Ms. Yon—or you have the mike. Mr. Lykins.

Mr. LYKINS. Yes, I believe that the PMAA and the OPMA still feel that that is a very important part of the bill.

Mr. DASKAL. Our position hasn't changed.

Mr. MANTON. Unlike the EPA's.

Mr. DASKAL. Yes.

Mr. LEITER. I was going to say that. Ours, SIGMA and NACS is still the same, that cleanups first, then enforcement, and the State funds third.

Ms. YON. No change from the States in terms of what we say is a priority. Only an added emphasis that we would like to be the ones to chose those priorities.

Mr. MANTON. And, as long as you have the mike there, you stated last year that the primary use of the Federal fund moneys in the States has been for the technical oversight of cleanup, and that you did not envision that primary use shifting after enactment of this legislation. Have you changed that view?

Ms. YON. No, that's still the same. What we see is happening is just by infusing more funds into this being able to do more cleanups.

Mr. MANTON. And, your testimony today is that States would strenuously object to the prioritization of uses of Federal LUST Trust Fund moneys in statutory language?

Ms. YON. Yes, we'd like to just be the ones, on our own individual basis, to chose our own priorities.

Mr. MANTON. So, if you do not envision a shift in the use of the funding, why do you in your testimony object to the use of such language?

Ms. YON. I think we're talking two different things. The proposed uses are being able to use the money for completely different programs. And my point is that every State has slightly different ways of handling issues that affect them. In some cases, enforcement might be more important than corrective action, and we only ask that we be the ones to put those in order of what's done first.

Mr. MANTON. This is a question for Mr. Lykins. I've seen a letter from the PMAA dated in March 1996, in which we were urged to oppose President Clinton's proposal to reinstate the leaking underground storage tank excise tax, which expired on December 31, 1995, because "Very little of the money in the fund will ever go toward its intended purpose, that is to clean up leaking underground storage tanks." If this bill is enacted into law, does that change your position on the excise tax?

Mr. LYKINS. We feel there's enough money there right now that we should start the cleanup and—get the law passed and start the cleanups and then see if there's a need to put the excise tax in, rather than just saying blankly now, there isn't a need or there is a need.

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